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March 21, 2014

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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
March 24, 2014
Part of
Public Record

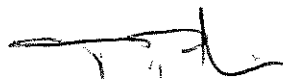
Re: **Finance Docket No. 35731**
Ballard Terminal Railroad Company, L.L.C. -- Acquisition
and Operation Exemption -- Woodinville Subdivision

Docket No. AB-6 (Sub-No. 465X)
BNSF Railway Company -- Abandonment
Exemption -- In King County, WA

Dear Ms. Brown:

Enclosed please find the Public Version of Ballard Terminal Railroad Company's Reply To King County, Washington, City Of Kirkland, Washington, And Puget Sound Regional Transit Authority's Opposition Comments in the above referenced proceedings.

Very truly yours,



Thomas C. Paschalis
Attorney for Ballard Terminal
Railroad Company, L.L.C.

TCP/ekf

Enclosures

cc: All Parties of Record (via email)

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2014, a copy of the foregoing
**Public Version of Ballard Terminal Railroad Company's Reply To King County,
Washington, City Of Kirkland, Washington, And Puget Sound Regional Transit
Authority's Opposition Comments** was served by electronic mail upon:

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Thomas C. Paschalis

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35731

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
-- ACQUISITION AND OPERATION EXEMPTION --
WOODINVILLE SUBDIVISION

DOCKET NO. AB-6 (SUB-NO. 465X)

BNSF RAILWAY COMPANY
-- ABANDONMENT EXEMPTION --
IN KING COUNTY, WA

**BALLARD TERMINAL RAILROAD COMPANY, L.L.C.'S REPLY TO KING
COUNTY, WASHINGTON, CITY OF KIRKLAND, WASHINGTON, AND PUGET
SOUND REGIONAL TRANSIT AUTHORITY'S OPPOSITION COMMENTS**

PUBLIC VERSION

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RAILROAD COMPANY, L.L.C.**

Dated: March 21, 2014

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COUNTY, WASHINGTON, CITY OF KIRKLAND, WASHINGTON, AND PUGET
SOUND REGIONAL TRANSIT AUTHORITY'S OPPOSITION COMMENTS**

Ballard Terminal Railroad Company, LLC ("Ballard"), by and through counsel, hereby files its Reply to the Opposition Comments filed on March 6 by King County, Washington ("King County"), City of Kirkland, Washington ("Kirkland"), and Puget Sound Regional Transit Authority ("Sound Transit") (collectively referred to as the "Reactivation Opponents").

BACKGROUND

In its December 6, 2013, Reply brief, Ballard detailed the overwhelming support for reactivation received from over thirty (30) railroads, railroad unions, shippers, municipal corporations, state legislators, banks, and investment brokers, all of whom are crying out for reactivation of the rail line between Woodinville, Washington, and Bellevue, Washington ("the Line").¹ The wave of support has not slowed since. In 2014, Ballard's efforts have been joined

¹ Ballard hereby incorporates its December 6, 2013, Reply herein.

by (1) Woodinville Whiskey Company, a local distillery located on the Line that seeks to receive grain, glass, and barrels (*see* February 13, 2014 letter of Orlin Sorensen, attached hereto within Exhibit 1); (2) U.S. Rail Partners Ltd., a short line rail carrier that already operates one short line Washington, and which is interested in developing an inland port in Bellevue for transloading containers between ship and rail (*see* February 11, 2014 letter of Drew Wilson, attached hereto within Exh. 1); and (3) the Port of Seattle, which expressly supports Ballard's partner, Eastside Community Rail, LLC ("Eastside"), in its efforts to raise capital for freight and passenger rail improvements (*see* January 31, 2014 letter of Joe McWilliams, attached hereto within Exh. 1). Were this Board proceeding to continue for several more months, there would undoubtedly be even more shippers, rail carriers, and financiers who step forward.

As it stands, there are 7 shippers, including one Fortune 500 company (General Mills), who seek to ship on the Line *if it is reactivated*. There are 2 financial institutions (America West Bank and Coastal Community Bank) who would like to participate in financing the reactivation of the Line *if it is reactivated*. Two short line railroads (Watco, one of the largest short line carriers in the United States, and U.S. Rail Partners) are interested in participating in financing and operations on the Line *if it is reactivated*. A railroad business advisory firm (EB5 Capital Partners) that works with companies with significant growth potential intends to source capital for infrastructural development and operations on the Line *if it is reactivated*. The two leading railroad employee unions, the United Transportation Union and the Brotherhood of Locomotive Engineers and Trainmen, support Ballard's Petitions, as do a host of Washington state legislators, the Cities of Snohomish and Woodinville, the County of Woodinville, and several local wineries and economic groups.

In the face of the overwhelming support that Ballard's proposal has received, and in light of their ever-increasing isolation, the three Reactivation Opponents have grown desperate in their attempts to stifle reactivation. Their "scorched earth" tactics include (1) taking 12 depositions (Ballard General Manager Byron Cole and Eastside Managing Member Douglas Engle have been collectively deposed for over 30 hours), forcing non-parties aligned with Ballard to sacrifice their time and incur substantial expenses in obtaining legal representation; (2) having Kirkland's outside council personally visit one proposed shipper to pressure him to sign a verified statement; (3) having Kirkland's general counsel request that another proposed shipper be kicked off of a job; and (4) subpoenaing documents from other parties aligned with Ballard; and (5) sending employees to take pictures of shipper property in an amateurish and unscientific attempt to argue that spur tracks cannot feasibly be constructed. Exhibit 2 - March 21, 2014, Statement of Douglas Engle.

The vigor with which these entities have opposed reactivation undermines their own arguments against reactivation and, further, provides context for the evidence on which they rely. Their attempts to belittle Ballard, Eastside, and their representatives do not change the fact that Ballard offers a realistic proposal for the resumption of freight services on the Line, a proposal which has extraordinary support from shippers, financiers, other rail carriers, local business leaders, and legislators. By contrast, not one single non-party entity has filed any support for the Reactivation Opponents' position.

In the final analysis, the Reactivation Opponents are not motivated by a conviction that Ballard cannot succeed in establishing rail service on the Line. Rather, their real fear is that Ballard *can and will* succeed in reviving freight operations on the Line. That fear is well-justified, as Ballard, throughout the course of recent months, has identified realistic sources

of financing and shippers intent on making use of service on the Line, thereby compelling the Board's granting of its Petitions.

STANDARD FOR REVIEW

As stated in Ballard's December 6, 2013, Reply brief, which Ballard incorporates herein, ICCTA provides that "it is the policy of the United States Government . . . to ensure development and continuation of sound rail transportation" 49 U.S.C. § 10101. When a rail line has been railbanked, interim trail use is subject to being cut off at any time by the reinstitution of rail service, at which time the trail user must step aside. *Georgia Great Southern – Abandonment and Discontinuance of Service*, 6 S.T.B. 902, 907 (2003). As it relates to the Line, the Board has previously said that any bona fide petitioner, such as Ballard, can request that the NITU be vacated and petition for reactivation of the Line. *King County, WA – Acquisition Exemption – BNSF Railway Company*, STB Finance Docket No. 35148 (STB served September 18, 2009) at 3-4.

ARGUMENT

Contrary to the directive of *Georgia Great Southern*, the Reactivation Opponents never intended to step aside if reactivation of the Line was proposed by a rail carrier. To ensure that no *bona fide* purchaser ever came along, they purchased the right of way and reactivation rights to the Line to squat on them and preclude any revival of freight operations.² Doing so has provided them a convenient argument to stifle reactivation proponents: they can claim that

² The argument regarding a trail is a red herring, as the Ballard has been a proponent of trails on its other lines and is willing to construct a trail adjacent to the Line.

reactivation proponents require property rights to the Line to be considered *bona fide*, all the while ensuring that no reactivation proponent could actually acquire said property rights.³

Such arguments take the *Georgia Great Southern* and *King County, WA* decisions and stand them on their head. The Reactivation Opponents waste considerable time discussing irrelevant facts such as Ballard's lack of historical and present rights to the Line in order to distract from the real issues the Board must decide: whether Ballard has identified likely shippers and sources of financing. See *Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, STB Docket No. FD 35731 (STB served August 1, 2013). The resounding answer to these questions is “yes.”

A. Ballard's Plan is Financeable

Throughout this proceeding, the Reactivation Opponents' have mercilessly attempted to marginalize Ballard and Eastside's business plan, painting Ballard as a failing short line with little resources or assets, and describing the two entities as “desperate gamblers.” The Board should pay no attention to such baseless rhetoric. Ballard is a short line rail carrier founded by Byron Cole in 1997 which, over the last 17 years, has grown from 1 to 3 short lines, increased its revenue by over 25% in 2013, increased its assets in 2013, is currently operating in the black, and has a strong relationship with its bank, who has lent money to Ballard in the past and would like to do so again in the future. Nerdrum Dep. (Exh. 3) at 27, 53-55; Confidential Exhs. 4 & 5; Engman Dep. (Exh. 6) at 94-95. Ballard has experience in constructing spurs for its industry and trails on its other lines.

³ Byron Cole bristled when asked whether Ballard had talked to Kirkland to discuss the cost of acquiring property rights to the Line: “Who would I talk to over there where they would talk to me back?” Cole Dep. (Exh. 15) at 32.

To the contrary, the three Reactivation Opponents, who have no business or rail industry expertise, expect the Board to accept their lawyers' judgments on what is feasible in terms of (1) financing the revival of the Line, and (2) shipper access to the Line. The comments of these naysayers, however, are overwhelmed by the chorus of experienced industry professionals who wholeheartedly support Ballard's plan for reactivation.

EB5 Capital Partners LLC and U.S. Rail Partners - EB5 Capital Partners LLC ("EB5") is a business advisory firm that evaluates domestic and international business for growth and investment opportunities. Behr. Dep. (Exh. 7) at 18. When it finds businesses that exhibit promise, EB5 takes an equity position in exchange for assistance in raising capital. *Id.* at 18-19. In this regard, EB5 looks for companies which demonstrate significant growth potential and a high likelihood of garnering capital investments. *Id.* Upon receiving an equity position, EB5 uses its connections in a variety of industry sectors to source capital. *Id.* EB5 has established a successful freight forwarding company in Germany, and international food import/export company in El Salvador. *Id.* at 18.

One of EB5's principals, Dan Behr, has a railroad background spanning 25 years, having been employed in operations, information systems, industrial economic development, marketing, and private consulting. *Id.* at 14-18. Mr. Behr is currently working on his Ph.D. thesis on the short line railroad model as applied to Europe. *Id.* at 35-36. Mr. Behr's recent experience includes working to obtain capital to renovate track used by the Blackwell Northern Gateway Railroad Company (which runs through Oklahoma and Kansas), reactivating the dormant Fitchburg-Oregon line in Wisconsin, and evaluating the traffic potential of the Wellsboro & Corning Railroad, which operates between Pennsylvania and New York. *Id.* at 81-83.

After meeting Douglas Engle in 2011, conducting research, and taking two subsequent trips to walk the Line and inspect loading sites in Bellevue, Mr. Behr concluded that the Line has significant potential for traffic growth if reactivated. *Id.* at 24-26, 28. Mr. Behr was particularly impressed by the opportunities to move construction spoils and aggregates to and from Bellevue (current site of a construction boom), to ship to General Mills in Bellevue, and to construct an inland port in Bellevue, a particularly lucrative prospect. *Id.* at 34-38, 74, 83-87; *see also* “A More Competitive Port,” attached hereto as Exhibit 8 (Behr Dep. Exh. 7). Mr. Behr, a strong proponent and researcher of inland ports, as evidenced by his article “A More Competitive Port,” discussed the prospect of an inland port in Bellevue with U.S. Rail Partners, a short railroad that already operates one line in Washington, which now supports reactivation and is “very interested” in utilizing Bellevue as a site to transload two-way container traffic from Asia. Exh. 7 at 38-42; February 11, 2014, letter of Drew Wilson (Exh. 1). The opportunity to create an inland port in Bellevue, which would support the Port of Seattle (as discussed in Mr. Behr’s study), underscores one of the reasons why the Port of Seattle is supportive of financing for Eastside’s projects. Revenues from an excursion train, an estimated \$10 million per year business, further strengthens Mr. Behr’s belief as to the economic viability of the Line, as does the prospect of marketing to Boeing. Exh. 7 at 67-69, 78.

The foregoing opportunities, and inflow of investment money, are all contingent on one thing: rail access to Bellevue. *Id.* at 76, 90. Mr. Behr, an investment expert, concluded that upon reactivation, capitalization for the infrastructure required to resume freight operations on the Line would be readily acquired. *Id.* at 74-75 (“we’re enthusiastic and anticipate a lot of traffic development.”). Mr. Behr, who has evaluated and helped fund numerous rail projects, has analyzed the investment and traffic potential associated with reactivation, and he continues to be

shocked by the Reactivation Opponents failure to appreciate the viability of the Line. *Id.* at 89; August 21, 2013, letter of Daniel Behr (attached hereto within Exh. 1). The enthusiastic support of EB5 and U.S. Rail Partners, outfits which evaluated the Line from an unbiased perspective, lends credence to Ballard and Eastside's business plan, while vitiating the naysayers' short-sighted and self-serving criticisms.

Paul Nerdrum and Salmon Bay Sand & Gravel – Ballard co-owner Paul Nerdrum, is also Vice President of Salmon Bay Sand & Gravel, a multimillion dollar concrete and building materials supplier (which receives direct rail shipments on Ballard's line in northwest Seattle) founded by his family over 100 years ago. Mr. Nerdrum is "committed" to participating in the financing of the reactivation proposal. Nerdrum Dep. (Exh. 3) at 31, 35; June 15, 2013, letter of Paul Nerdrum (attached hereto within Exh. 1). The scope of the investment is dependent on the overall financial package, and will be determined when all investors come together post-reactivation. Exh. 3 at 31, 35.

[***CONFIDENTIAL MATERIAL***]

American West Bank - American West Bank ("American West"), one of the largest in the Pacific Northwest, has an 18 year relationship with Ballard. Engman Dep. (Exh. 6) at 93. Nathan Engman, Ballard's account manager, characterized the bank's relationship with Ballard and its principals, Byron Cole and Paul Nerdrum, as "quite strong." *Id.* at 94.

In drafting his letter to the Board, Mr. Engman verified BTR's payment history on prior loans, collateral, and the strength of its guarantors (Cole and Nerdrum) before advising the Board of American West's interest in participating in financing of reactivation activities. *Id.* at 31; *see also* November 22, 2013, letter of Nathan Engman (attached hereto within Exh. 1). Mr. Engman specifically wanted his November 2013 letter to the Board to convey that American

West could participate in a loan to Ballard, even for substantial amounts of money. Exh. 6 at 78-79, 25-26. In fact, throughout his deposition, counsel for Kirkland repeatedly threw out large figures (such as \$37 and \$47 million) in an attempt to get Mr. Engman to disavow any interest in lofty loan amounts. Mr. Engman did not bite. *Id.* at 80-81, 117. Mr. Engman stated that a multimillion dollar loan to Ballard is realistic and that American West would determine the amount of any loan in the context of the size Ballard's needs and the scope of its collateral (which includes track, rolling stock, land, cash flow, and accounts receivable, including profits from an excursion train). *Id.* at 95-96, 117.

Throughout his 4-hour deposition, Mr. Engman never equivocated on American West's desire to participate in Ballard's growth by participating in the financing of reactivation efforts. *Id.* at 113 ("I just wanted to do a loan with [Ballard] . . . [a]nd I still, frankly, do want to do a loan with them"), 95. Moreover, Mr. Engman testified that it would be "premature" to evaluate any loan application by Ballard until the Board rules on whether Ballard can operate on the Line: Engman "couldn't come with a scenario" where by Ballard obtains meaningful final loan approval until it has reactivation rights to the Line. *Id.* at 100-101, 115-116.

Coastal Community Bank - As the Reactivation Opponents correctly note, neither Ballard nor Eastside are current customers of Coastal Community Bank ("Coastal Community"), one of the fastest growing community banks in the United States. Starup Dep. (Exh. 10) at 55, 62, 85. Despite having no relationship whatsoever, manager Greg Starup saw such private and public benefits in the reactivation efforts that he submitted a letter expressing his bank's desire to participate in the financing associated with the resumption of freight operations on the Line (*i.e.* acquiring rolling stock, constructing terminals, purchasing easement on Line). *Id.* at 44-45, 76-

79; November 21, 2013, letter of Greg Starup, attached hereto within Exh. 1). His willingness to do so speaks volumes.

Ballard and Eastside, upon obtaining reactivation of the Line, intend to apply for two small business administration (“SBA”) loans of \$5 million each. Like Mr. Engman, Mr. Starup made clear that it is premature for Eastside and Ballard to submit loan applications at this time. Mr. Engman stated that he would not to even evaluate at an application until such time as the Board grants reactivation rights to Ballard because it would not be an efficient use of time. *Id.* at 21-22, 69-70. Conditional approval prior to a Board decision is not an option with Coastal Community. *Id.* at 21-22. Mr. Starup explained why, noting the “chicken and egg situation” that nearly every deponent in this matter testified to: “I think it would be very difficult for [Ballard] to be able to get . . . conditional commitments of business, for example, arranging potential freight hauls, unless they did have some sort of authority [from the Board to operate on the Line].” *Id.* In that one statement, Mr. Starup refuted one of the Reactivation Opponents most prominent arguments: that Ballard should be expected, prior to reactivation of the Line, to have firm commitments from all of its shippers.⁴

During the course of his 3.5-hour deposition, Mr. Starup never backed away from Coastal Community’s desire to work with Eastside and Ballard in the financing freight rail operations on the Line.

Watco – Watco Companies, LLC (“Watco”) is one of the largest short line operators in the United States. Watco has been mindful of opportunities on the Line since 2008, and given the current level of shipper interest and financial support, has “determined that it is an

⁴ If such a standard existed, then Georgia Great Southern and King County, WA would be rendered meaningless, as no third party carrier that lacks rights to a railbanked line could realistically obtain reactivation.

opportunity worth pursuing and participating in” and “upon a favorable reactivation decision, is “prepared to apply its resources to assist in reactivating the line and to provide the customer base with the best rail service possible.” November 25, 2013, letter of Mark Blazer (attached hereto within Exh. 1). Like the aforementioned entities, Watco’s interest participating in operations and funding of the Line are entirely contingent on Ballard’s receipt of reactivation. *Id.*; Engle Dep. Trans. (Exh. 11) at 179-181; February 14, 2014, Declaration of Mark Blazer (attached to Kirkland’s March 6, 2014, Comments). At such time, Watco intends to conduct its due diligence and determine its level of investment in financing and participation in operations. *Id.* To date, Watco and Eastside have contemplated utilizing Watco’s expertise in handling larger consists, providing power, servicing larger shippers with specialized needs, such as Boeing. Exh. 11 at 22-23, 178-179.

B. Ballard Has Legitimate Shipper Interest

General Mills - General Mills is a Fortune 500 company that used to deliver flour by rail from Great Falls, Montana, to the Safeway bakery in Bellevue (which has an existing spur from the Line). When the Line was railbanked, General Mills was forced to offload to trucks in Tacoma for truck shipping south to Bellevue. The projected volume of 225 railcars per year is based on estimates provided by manager Tom English to Douglas Engle, and verified by Ballard’s prior experience handling General Mills traffic on the short line it operates in northwest Seattle. Exh. 11 at 80-82.

General Mills’ desire to ship on the Line is uncontroverted. The Reactivation Opponents’ spared no expense and left no stone unturned in their (unsuccessful) efforts to diminish each named shipper’s ability and interest in shipping on the Line. With respect to General Mills, they apparently came up empty, though undoubtedly it is not due to any lack of

effort. General Mills, in fact, stepped up to the plate when Douglas Engle advised Mr. English that General Mills' support was crucial to reactivation. As the reactivation opponents pointed out, within days of being advised as such, General Mills provided the letter attached hereto within Exhibit 1, though it had no obligation to do so.

General Mills' access to the Line and interest in shipping to Bellevue is clear and unequivocal: shipping flour on the Line provides "a large environmental and competitive benefit."

RJB Wholesale - RJB Wholesale is the Western United States' leading supplier of steel and PVC pipe to the wholesale distribution market, and it is located on the Line in Kirkland.⁵ Because the municipality in which it resides so vigorously opposes reactivation, RJB's persistent support for reactivation has always put it in a precarious position. Nevertheless, its support for reactivation has not wavered. It submitted letters to the Board in June and August 2013 (attached hereto within Exhibit 1) expressing its desire for rail service and ability to receive 2-3 carloads of pipe and other materials (based on current volumes) per month on the Line. Currently, RJB's product is shipped to Puyallup by rail, where RJB must expend labor and resources to offload and ship it to Kirkland by truck. RJB President Nick Beck reiterated his support for rails *with* trails when he was served by Kirkland with a subpoena to testify at deposition and produce documents. January 30, 2013, email from Nick Beck to all counsel, attached hereto as Exh. 12. In his February 13, 2014 Verified Statement (attached hereto within Exhibit 1), Mr. Beck reiterated that "RJB will benefit from direct rail service, and I would like to have it as soon as possible."

⁵ See www.rjbwholesale.com.

Kirkland grasps at straws by arguing, without any credible evidence, that a spur track cannot possibly be constructed on or near RJB's facility. This is a familiar refrain with respect to several of the proposed shippers, and it is an argument of last resort rooted in bare speculation. Ballard is experienced at building spur tracks for its industry, its General Manager Byron Cole has two engineering degrees, and Eastside plans to develop designs for RJB's spur within 30 days of this Board's decision to reactivate the Line. Exh. 11 at 190. Most notably, Kirkland's own engineer did not conclude that a spur track to the RJB property is not feasible, he merely estimated the elevation distance between the track and the property.

Aggregates West - Aggregates West, a major supplier of aggregate, supports reactivation due to its desire to access to the construction boom going on in Bellevue. Day Dep. (Exh. 13) at 64. Thus, its commitment to ship is entirely contingent this Board's grant of reactivation rights to Ballard. During his 3.5 hour deposition, Sales Manager Scott Day testified that it currently trucks 30,000 tons of aggregate to Bellevue each year, which accounts for the Ballard's yearly projection of 300 cars. *Id.* at 41-44. Aggregates West currently has a contract to ship to the Google site in Kirkland. Though its Monroe quarry is not located on the BNSF line which ultimately feeds into Ballard's Freight Segment and the Line, Mr. Day testified that he has years of experience in getting materials around the Seattle area and that he would "absolutely" figure out a way to connect to the BNSF line via a spur track or acquiring a lay down yard adjacent to the BNSF line. *Id.* at 75. Far from being impossible, some of Mr. Day's competitors who do not have direct access to rail lines do just that. *Id.* at 102-104, 107-108. Mr. Day is awaiting the Board's decision on reactivation to commence his search. *Id.* at 68.⁶

⁶ Mr. Day has firsthand experience with the Reactivation Opponents' bullying tactics. Prior to his deposition, Mr. Day was contacted by counsel for Kirkland and advised that he could avoid going through a "big, long deposition" if he signed a verified statement drafted by Kirkland. Exh. 15 at 78. It was suggested that this would be a better use of his time. *Id.* Day declined. *Id.* After his deposition,

CT Sales - CT Sales manufactures rebar used in construction projects. As a consequence, it is also motivated by a desire to ship its finished product down to Bellevue where construction is exploding. House Dep. (Exh. 14) at 58-59.⁷ Currently, there are no customers aware of the potential for receiving rebar by rail because the CT Sales does not market a non-existent option, but he has at least one current customer on the Line. *Id.* at 82. CT Sales has figured out how to make significant capital improvements to its property over the years, including the construction of the buildings on its premises, it has an idea for where to put a spur on its property, and there is no credible reason to believe that it and Ballard cannot determine the placement of a spur track. *Id.* at 65-67.

Woodinville Whiskey - Woodinville Whiskey, a growing distillery located on the Line, seeks to receive grain, glass products, and wooden barrels by rail. *See* February 13, 2014 letter of Orlin Sorensen, attached hereto within Exhibit 1. Grain can be offloaded from the main line until the construction of a spur track commences. Woodinville Whiskey is “ready, willing and able to execute a transportation agreement with the railroad upon reactivation” of the Line.⁸ *Id.*

Wolford Trucking and CalPortland - Wolford Trucking and Demolition, a local construction company heavily involved in construction throughout the area, and CalPortland, one of the largest aggregates shippers in the United States, were addressed in Ballard’s December 6 filing, which Ballard hereby incorporates herein. Wolford Trucking seeks to haul excavation

Aggregates West was kicked off a job by a general contractor at the request of Kirkland, only to be put back on after he personally called Kirkland’s outside counsel to question why this had been done. Exh. 2.

⁷ Mr. House’s deposition lasted approximately three-and-a-quarter hours.

⁸ Kirkland sent a Neighborhood Services Coordinator to photograph elevations around Woodinville Whiskey, but the Verified Statement of this gentleman, who is neither an engineer nor a rail expert, makes no conclusion that a spur track is not feasible.

spoils from Bellevue to its facility near the Freight Segment (*see* March 27, 2013, letter of Bobby Wolford, attached hereto within Exh. 1), while CalPortland seeks to ship aggregates to Bellevue from Everett (*see* March 25, 2013, and August 16, 2013, letters of Michael Skrivan, attached hereto within Exh. 1). For both entities, access to Bellevue is critical, and that is why their use of the Line is contingent on the Board's grant of reactivation.

C. Doug Engle and Byron Cole

Ballard will not belabor the Board with an exhaustive summary of the nature of the Ballard and Eastside's partnership. The Reactivation Opponents heard over 30 hours of sworn testimony from Mssrs. Cole and Engle describing Ballard and Eastside's level of trust, division of labor with respect to the marketing and business planning, and their commitment to work together indefinitely. Cole Dep. (Exh. 15) at 103-105. They heard Mr. Engle verify the car counts he presented in the Reactivation Support Log (Exh. 1) and the basis for Ballard's estimate the replacement of track on the Line will cost approximately \$1.1 million per mile. Engle Dep. (Exh. 11) at 67-69, 80-101. They heard Mr. Engle testify that shipper and investor interest has actually *intensified* since the removal of the rails. *Id.* at 203. They know that Ballard has explored laydown yards near at the industrial park in Bellevue near Lowe's, and they know there is a batch plant within a quarter mile of the line in Bellevue.

To the extent that the Reactivation Opponents' question the seriousness of the business plan, it is not because they, in any sober analysis, do not *believe* the plan will succeed. Rather, it is because they do not *want* the plan to succeed. To be sure, the Reactivation Opponents fully realize what the 30-plus non-party rail advocates have: that Ballard's plan is no fool's errand. Mr. Engle, a Certified Business Intermediary, has spent six years working to facilitate rail operations on this corridor. He has done so because he believes in the rail viability

of region. Mssrs. Engle and Cole could have walked away from their efforts to reactivate the Line after Kirkland removed the track last October, but they did not do so due to that same belief in the Line's potential. The costs have been significant, but these gentlemen see the same benefit as Ballard's 30-plus supporters: the Line, upon reactivation, will provide a boon to local industry.

In standard rails-to-trails railbanking scenarios, reactivation of rail service by the underlying rail carrier is virtually automatic *regardless* of the size of the railroad desiring that reactivation. *King County, WA – Acquisition Exemption – BNSF Railway Company*, STB Finance Docket No. 35148 (STB served September 18, 2009) at 3. *See also Georgia Great Southern – Abandonment and Discontinuance of Service*, 6 S.T.B. 902, 907 (2003), *Idaho Northern et al. – Abandonment & Discon. Exemption*, 3 S.T.B. 50, 59 (1998); *Iowa Southern Railroad Company – Exemption – Abandonment*, 5 I.C.C.2d 496 (1989), *aff'd Goos v. ICC*, 911 F.2d 1283 (8th Cir. 1990); *Citizens Against Rails-to-Trails v. STB*, 267 F.3d 1144 (D.C. Cir. 2001). This Board should not hold Ballard to a standard higher than any underlying rail carrier who wishes to reactivate a railbanked line. Ballard has identified shippers and sources of financing for reactivation of the Line. On this basis, Ballard has satisfied the requirements necessary to receive reactivation rights to the Line.

CONCLUSION

Ballard's support for reactivation is widespread and growing. The opposition is isolated and desperate. The Board should have no illusions as to the implications of its decision in this matter. There are numerous shippers and investors anxiously awaiting the Board's decision on reactivation and looking forward to having the final barrier removed so that the next phase of reviving the Line can be implemented. While the Reactivation Opponents have done

their best to intimidate and caricaturize Ballard and its allies, support has skyrocketed between fall 2013 and the present. Daniel Behr, EB5, and U.S. Rail Partners do not believe rail opportunities are dead on the Line. Nor does Watco. Nor do the myriad of industry located near the Line and Freight Segment. Railroad labor unions, Washington state legislators, the Cities of Snohomish and Woodinville, the County of Snohomish, the winery industry, and local economic groups believe that rail traffic on the Line is viable and an extraordinary economic and environmental benefit to the region. This Board should conclude the same.

For the above stated reasons and based upon the above cited authority, Ballard hereby requests that the Board (1) issue an exemption from the provisions of 49 U.S.C. 10902 to enable Ballard to acquire the residual common carrier rights and obligations, including the right to reinstitute rail service, and the remaining physical trackage assets and right of way on the subject line of railroad, and (2) partially vacate the NITU covering the portion of the Woodinville Subdivision, between MP 23.8 at Woodinville, Washington and MP 12.6 at Bellevue, Washington.

Respectfully submitted,

By: 
Myles L. Tobin
Thomas J. Litwiler
Thomas C. Paschalis
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR BALLARD TERMINAL
RAILROAD COMPANY, L.L.C.**

Dated: March 21, 2014

EXHIBIT 1

Ballard Terminal Railroad Co.
STB Reactivation Letters Filed
As of 2013 December 5

PARTY		Reactivation		*=Opposition	Annual Car Count	
		rail & trail	transit & trail	Excursion Support	Initial	long-term
Government						
Washington State Legislature (2 Board letters)	state	X		Yes		
Port of Seattle (no opposition)	county					
Puget Sound Engery (no opposition)	regional					
Sound Transit*	regional		X			
King County*	county		X			
Snohomish County	county	X		Yes		
City of Kirkland*	city		X			
City of Snohomish	city	X		Yes		
City of Woodinville	city	X		Yes		
City of Bellevue (no opposition)	city					
Non-Governmental Organizations						
Brotherhood of Locomotive Engineers and Trainmen	regional	X		Yes		
United Transportation Union	regional	X		Yes		
Economic Alliance of Snohomish County	county	X		Yes		
Cascadia Center (West Coast transportation)	regional	X		Yes		
All Aboard Washington (rail advocacy)	state	X		Yes		
Taste of Washington (petition)	state	X		Yes		
Master Builders Association	regional	X		Yes		
Eastside Rail Now! (rail advocacy)	local	X		Yes		
Financial Support for Reactivation						
WATCO - Railroad	national	X		-		
Coastal Community Bank (S.B.A. Preferred Lender)	national	X		Yes		
American West Bank	regional	X		Yes		
EB5 Capital Partners.us	RR niche	X		Yes		
Ballard Terminal RR Co - Paul Nerdrum	local	X		Yes		
Reactivation Freight Customers						
General Mills (flour)	national	X		Yes	225	250
RJB Wholesale (piping)	local	X		Yes	30	40
CT Sales (rebar fabrication)	local	X		Yes	120	155
Wolford Trucking and Demolition	local	X		Yes	750	2,000
CalPortland (aggregates)	regional	X		Yes	350	600
Aggregates West	regional	X		Yes	300	550
Ready-Mix Concrete Plant (letter pending)	regional	-		-	-	-
					1,775	3,595
Operating Line Freight Customers						
Boise Cascade	national	X		Yes	95	120
Spectrum Glass	regional	X		Yes	95	120
Matheus Lumber	national	X		Yes	50	75
					240	315
Excursion Businesses						
Ste Michelle Wineries	global	X		Yes		
Gallo Wines (dba Columbia Winery)	national	X		Yes		
Bounty of Washington Tasting Train	local	X		Yes	1,520	2,112
Total Railcar Traffic						
		29	3	28	3,535	6,022

FINANCIAL SUPPORT

EB5 Capital Partners.us, LLC

3145 Cherry Lane • Northbrook, IL 60062 • Tel: 847-951-7245 • dth@eb5capitalpartners.us • 224-422-0772 dco@eb5capitalpartners.us

August 21, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

REF: STB FINANCE DOCKET NO. 35731

BALLARD TERMINAL RAILROAD COMPANY, LLC.

ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

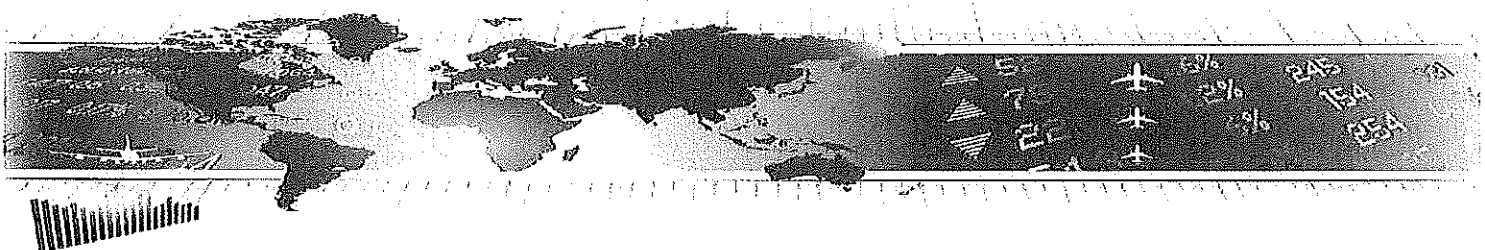
Dear Ms. Brown,

In connection with evaluating the investment opportunity of the Eastside Rail Corridor, I discovered that there is substantial potential for a viable transload business, construction materials and spoils hauling, as well as incubating additional carload freight traffic, as a result of emerging demand in the area.

Assets, in the form of a three track yard, located behind Lowe's and the International Paper facilities exist to support substantial transload operations in Bellevue, augmented by the ease of the adding an access and maintenance of way road along most of this rail corridor, further facilitating existing and new rail traffic.

This area has substantial in-place rail infrastructure, in the form of switches and rail sidings into buildings, offering the option of rail to shippers that would no longer exist, if the line were severed.

In addition, due to the demographic and market attributes of the area, the line offers substantial opportunity to re-establish a previously proven and commercially successful excursion train, further increasing the line's economic viability and value to both its existing and future rail shippers.



3145 Cherry Lane • Northbrook, IL 60062 • Tel: 847-951-7245 • dlb@eh5capitalpartners.us • 224-422-0772 dco@eh5capitalpartners.us

Very truly yours,

David T. Behr

Daniel T. Behr
Principal – EB5 Capital Partners.us, LLC.





US Rail Partners, Ltd.

620 Kruk Street

Lemont, IL 60439

847-824-1264

February 11, 2014

Mr. Dan Behr
Principal
EB5 Capital Partners

Mr. Behr,

U.S. Rail Partners, Ltd. (USRPL) is a short line rail operator, operating two rail lines in the United States. A "short line" is defined by the U.S. Surface Transportation Board as a railroad with less than \$34 million in annual revenue.

As a rail operator in the State of Washington, USRPL has interest in the freight potential of this line. The proximity to major consumer markets along with the available rail spurs and existing warehouse assets make for a good combination of attributes that allow for solicitation of rail freight originating from points in North America outside of the PNW destined for local warehousing and distribution.

USRPL also sees the value of the line in its proximity to the Port of Seattle to utilize these assets to facilitate the transload of Asian imports from containers into railcars for the inland portion of the product movement. Our business believes that significant rail traffic demand exists, particularly in the Bellevue area for development of this business model. The rail line and its assets are well positioned to capture this business.

A "transload" is defined as unloading goods from one means of transportation into another vessel. This is a common practice in North American and global logistics and is driven by the economics of the freight carriers and supply chain. Goods to be targeted are mainly low-value mostly unfinished products, especially bulk products, where the extra costs of speed to market of offset to the shipper by the efficiencies of railcar movement. This activity has the potential to become a significant revenue source for the railroad as well as a significant tax base and employment generator for the community.

USRPL is interested in learning more about this opportunity.

Regards,

Drew Wilson
President
U.S. Rail Partners, Ltd.
847-824-1264 x1009



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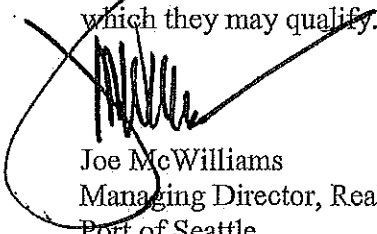
January 31, 2014

To Whom It May Concern:

The Port of Seattle supports efforts to ease traffic congestion and improve freight mobility throughout the Puget Sound region; accordingly, in 2010, it acquired the former BNSF eastside rail corridor to pursue and expand freight operations from Snohomish and north King Counties to promote economic growth while concurrently easing traffic congestion.

Over the past few years, the Port has continued to seek opportunities for enhancements to the corridor and provide opportunities for adjacent cities and their respective utilities to provide for public infrastructure improvements that would otherwise confound the existing public rights of ways in Bellevue, Kirkland, Redmond and other parts of the county.

At present, the operator of the corridor, Eastside Community Rail, desires to access various capital funds related to freight and passenger rail improvements and has solicited support from the Port of Seattle in that pursuit. While the Port is not the sponsor of such a request, we support Eastside Community Rail's application for any available grants or other funding mechanisms for which they may qualify.



Joe McWilliams
Managing Director, Real Estate Division
Port of Seattle



Walter J. Hirsch
Senior Vice President
Strategic Development West Region
1900 N. Main, Suite 14
Helena, MT 59601
P 406-495-1096
www.watcocompanies.com

Watco Companies, L.L.C.

November 25, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

REF: STB FINANCE DOCKET NO. 35731

Dear Ms. Brown:

We support the reactivation of freight service between Woodinville and Bellevue, Washington. WATCO would like to impress upon the Board that the reactivation process requires an incremental approach to reestablish sustainable rail service on the line. Committed customers have provided written support for this reactivation to the Board.

WATCO has been mindful of this opportunity since our participation in the 2008 BNSF and Port of Seattle bid to provide rail service on this line. Earlier this year we expressed our requirements to participate in operating the line. With additional shippers requesting service on the railbanked portion of the line, and their stated willingness to participate financially to secure rail service, we determined that is an opportunity worth pursuing and participating in.

We believe the next steps in reestablishing rail service are to (i) gage customer commitment by requiring take or pay agreements associated with car volumes (ii) establish the customers' level of financial participation associated with the upfront cost of reactivating this line and (iii) negotiate operating and use agreements following the Board's reactivation of the line.

WATCO is prepared to work with Ballard to assume freight operations for the unit trains between Bellevue and the BNSF mainline in Snohomish, provided a supportive Board decision to reactivate the line is obtained. We expect no material issues in establishing shipping agreements and rates with the freight parties in this matter.

We understand that an excursion train business will operate also on the line. The expectation is that our crews will schedule and operate these trains to meet the needs of our shippers and help the excursion business meet their objectives. Incremental insurance requirements for passenger operations will be the sole responsibility of the excursion train and will be paid through the income generated from passenger tickets. Additionally, we support rails and trails inside this right of way provided adequate safety precautions, insurance



Mark Blazer
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Watco Companies, L.L.C.

and use agreements with appropriate rail to trails groups taking full financial responsibility for all costs and liability incurred in building and maintaining these trails.

Because of the substantial effort and time required to complete this work along with the risk of not knowing the reactivation outcome, the necessary arrangements for financing, operating and use details cannot be fully established until a favorable Board reactivation decision is made.

We understand and appreciate the complexity and effort required to reestablish service on a rail banked line and such capital investment and agreements cannot be developed without the Board's decision. Once a favorable decision from the board is received, WATCO is prepared to apply its resources to assist in reactivating the line and to provide the customer base with the best rail service possible.

Thank you for your consideration.

Very truly yours,

Mark Blazer
Senior Vice President - Strategic Development West Region



November 22, 2013

Ms. Cynthia T Brown
Chief, Section Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW, Room 1034
Washington, DC 20423-0001

RE: STB FINANCE DOCKET NO 35731
BALLARD TERMINAL RAILROAD COMPANY LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

AmericanWest Bank has provided financial services to Ballard Terminal Railroad Company, LLC(BTRC) since 1996. The Bank has provided BTRC capital loans for equipment and other works in the past which have always been paid as agreed. We want to continue to help BTRC grow.

Our bank has \$4 billion in assets hand and have been rapidly expanding for the past 3 years with additional capital to deploy to reach our goal of being a \$7-\$8 Billion bank within the next few years. We are fully capable of participating in a financing package for the reactivation of the Eastside Rail Corridor. However, it would be nearly impossible to know what the full scope of the financing package would look like until the Board makes a decision on whether to reactive the corridor and what limitations or requirements it asks for. Therefore before AmericanWest Bank can make definitive commitments, the Board would need to act to preserve rail service on this line.

We urge you to consider BTRC's proposal for reactivation of freight rail service over the "Kirkland" segment of the former BNSF Woodinville Subdivision. Reactivation of this line segment would also open opportunities for establishing commuter rail service & excursion train service over the 25 mile Snohomish-Woodinville-Bellevue line.

Sincerely,

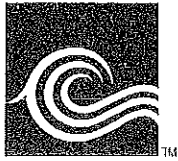
A handwritten signature in black ink, appearing to read "Nathan Engman".

Nathan Engman

VP & Community Bank Manager

Ballard Branch
2237 NW 57th St.
Seattle, WA 98107

(206) 784-2200
(206) 784-6650 fax
AmericanWest Bank



November 21, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

Coastal Community Bank is a preferred lender for the Small Business Administration. The bank has been in discussions with Eastside Community Rail, LLC working with Ballard Terminal Railroad Company since January this year, to provide capital loans for equipment and other works on the Eastside Rail Corridor. The railroad has broad community support as described in the many letters previously submitted to the Surface Transportation Board, which we have reviewed.

Our bank has \$370 million in assets and has been steadily growing for the past 3 years. We are fully capable of participating in a multi-million dollar financing package for the reactivation of the Eastside Rail Corridor. However, until the Board makes a reactivation decision, it is nearly impossible to know what that financing package and entity structure should actually be as there are many options to consider.

Given the line currently starts in Snohomish, a Woodinville terminus versus Bellevue is very significant. This also impacts the three rail use alternatives of freight, excursion and commuter. Understanding the freight customer mix and land requirements for aggregates, spoils removal and concrete production add further complexity. Additionally, transit oriented development has material financial impacts. The Board's action to preserve rail service on this line must be in place before Coastal Community Bank can make any definitive commitments.

Once we have sufficient information, a large part of which will be heavily impacted by the Board's decision on this matter, we are ready, willing and able to determine specifically what assistance we can offer to help make the Eastside line to Bellevue a success with these railroad companies.

Thank you for your understanding.

Sincerely,

Greg Starup
Vice President,
Manager of SBA Lending
425-258-5299

June 15, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Dear Ms. Brown:

Our shortline railroad company, Ballard Terminal Railroad Company, LLC (BTRC,LLC), was formed in 1996. Today we own and operate two small, freight only, shortlines in the greater Seattle area. In the Ballard industrial district we have the Ballard Terminal Railroad (BDTL), and in the Puyallup area we have the Meeker Southern Railroad (MSN). Both lines were spun off from the BNSF Railway, one in 1997, and the other in 2000. In addition, we recently took steps to solidify our position as the freight railroad providing the common carrier service on the Snohomish to Woodinville line segment, for East Side Community Rail.

In late 2009, in a well intentioned joint venture with Mr Tom Payne's GNP Railway, both BNSF, and the Port of Seattle approved BDTL as the common carrier freight service provider on the 14 mile Snohomish to Woodinville segment of the Eastside Rail Corridor, which the Port of Seattle subsequently purchased, in late 2009. We ran our first freight train on the East side line in January, 2010, and continue to do so today, with twice weekly service, between East Snohomish Junction and Woodinville, WA. Currently we have four customers on the 14 mile line.

I would like to impress upon the Board the importance of restoring freight rail service between Woodinville and Bellevue, Washington, a distance of about 12 miles, which is currently railbanked. The northern portion of the Eastside Rail Corridor is our third shortline in the Puget Sound area, and we are ready, willing and able to make the Eastside line to Bellevue a success.

I am the majority shareholder of Ballard Terminal Railroad Co. (Ballard) and silent partner to Byron Cole, our General Manager, for the past 15 years. My family has owned and operated Salmon Bay Sand and Gravel Co. in Seattle for over 100 years, where I am currently Vice President. Salmon Bay S&G is a major concrete and building materials provider to the greater Seattle Area. We currently receive direct rail shipments of dry bulk cement to our inner city ready mix concrete plant, via BDTL, who interchanges with BNSF. Our annual revenues are significant, and we are profitable witness to our many years in business and operational growth.

BTRC,LLC is a viable business as well. BTRC,LLC qualified for and received, a \$300,000.00 interest free loan, for track rebuilding, from the Washington State Department of

Transportation Rail Office, in 1997, when we acquired the first railroad, and paid it back, in full, on time. In 2000, we qualified for, and received, a \$350,000 loan, for track rebuilding at the second railroad (MSN), which we are currently close to paying off. In 2009 we had no difficulty in financing the purchase of a third \$150,000 locomotive. In 2010, we qualified for and received a modest Washington State grant of \$62,000, to help finance a new industrial spur we constructed into a new transload facility, on our Meeker line.

We expect no difficulties in funding the necessary track rehabilitation for freight operations on the 12 mile, Woodinville to Bellevue segment of the Eastside Corridor. We have inspected it, and find it to be close to "Excepted" condition for much of the route. It is premature to seek any financing without first obtaining the rights to operate the line from the Board.

We are not a company or people to pursue risky ventures, and we believe there is a viable market for our freight railway services between the BNSF mainline in Snohomish and Bellevue, otherwise why would we invest our time and resources on this costly and arduous path to reactivate this vital segment of railroad?

The region has been fortunate with companies like Microsoft, Expedia, Google, Nintendo, AT&T Wireless, Verizon, and many other thriving enterprises on the Eastside. We look forward to a continued future of economic growth in the Bellevue and Kirkland areas.

Since Eastside Community Rail acquired the freight easement and running rights in December 2012, Ballard for the first time has had an opportunity to market the line and bring new opportunities to bear. Over a dozen construction projects worth in excess of \$15 billion are being permitted in Bellevue, Washington, and timely restoration of rail service to Bellevue is critical. Reactivation of rail service from Woodinville to Bellevue is vital to the efficient transportation and removal of 4-million cubic yards of construction spoils, delivery of aggregate fill from barge to railcar, delivery of fabricated rebar, and various other construction materials. Two respectable and successful regional companies, CalPortland and Wolford Trucking, have affirmed this market. The future has even more projects lending to rail service.

These projects were not foreseeable when BNSF abandoned the line, but they have emerged as Ballard's opportunity today.

At the Meeker Southern line, we are just completing an expansion of one of our Meeker transload facilities to support our growing business and partnerships with Optimus Transport, Inc and Sound Delivery Services there. Comparable transload opportunities very likely exist on the Woodinville to Bellevue line segment provided time to develop them.

As a lifelong resident of the area, I have watched our highways become overburdened, including truck transportation that is neither efficient nor cost-effective sitting in constant traffic. The opportunity to utilize the Eastside Rail Corridor as a viable option for the movement of these materials is a very advantageous option for the region. The railroad has the ability to help lower traffic congestion, reduce road wear, and improve air quality while still servicing the market with the needed construction materials with the most efficient logistic methods possible.

Ms. Cynthia T. Brown
June 14, 2013
Page 3

Ballard has recently been approved by BNSF to be a Handling Carrier on the Eastside. (the best, most efficient business model for small shortline railroads). Further, the American Shortline & Regional Railroad Association has recognized Ballard 15 consecutive times with the Jake award for completely accident-free, annual operations.

To summarize, Ballard is a bona fide railroad that is ready, willing and able to assume freight operations and develop the obvious business opportunity at the end of the Woodinville to Bellevue segment of the Eastside Rail Corridor.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul Nerdum", written in dark ink.

Paul Nerdum

Majority Owner – Ballard Terminal Railroad Co.
Vice President – Salmon Bay Sand & Gravel Co.



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COMPANY

OVERVIEW

When a company can proudly lay claim to having been in business since 1907, it immediately distinguishes itself among businesses everywhere. Salmon Bay Sand and Gravel Company is just such a company.

When Samuel Nerdrum founded the company, the Ballard area of Seattle was still the City of Ballard. Cedar trees and three-masted schooners dotted the skyline, the Space Needle was unimaginable, and William Boeing had yet to build his first airplane. It was a good time to start a business in the prosperous Scandinavian logging and fishing community located on the shores of Salmon Bay.

The new company's first major project was the 1907 Alaska Yukon Exposition. At that time, there were no Ballard Locks or ship canal (they would not open until 1917), so barge loads of sand and gravel were brought into Salmon Bay at high tide and hand loaded onto horse-drawn wagons for the trip to the exposition site. These original buildings now stand as a historic part of the University of Washington campus. Over 90 years later, and still operating at its original location, this fourth-generation family-owned business has played a major role in the development of Seattle and its northern neighborhoods. Today, a fleet of modern delivery trucks transport materials throughout the Puget Sound area, over many of the same routes their early Teamster predecessors guided loaded wagons of sand, gravel and cement.

Present-day Salmon Bay Sand & Gravel has evolved into one of the Northwest's largest suppliers of construction materials. The company specializes in plaster, stucco, EIFS systems, waterproofing and restoration products, sealants, grouts, and many other construction related chemicals and products. The "Bay" is also known throughout the region for its assortment of tools and accessories for use in the trowel related trades.

Just as the assortment of products and materials has expanded over the past eleven decades, so has Salmon Bay's sales horizons. Sales of products to customers throughout the Western United States and Pacific Rim are a common occurrence, while government and military sales efforts result in materials and equipment finding their way into the far corners of the world. Whether its the Craftsman-style house in Ballard, the U.S. Embassy in Prague, or the Navy base on Diego Garcia, Salmon Bay and its employees are proud to be a part of all variety, shape, and sizes of projects, regardless if they are next door or in another hemisphere.

COMPANY

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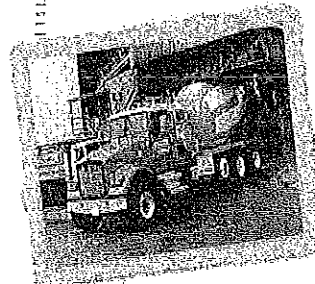
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February 13, 2014

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

RE: STB FINANCE DOCKET NO. 35731
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

Please accept this letter in support of reactivating the rail line segment between Woodinville and Bellevue, Washington. We are a four year old, small batch distillery that is just now moving into a much larger, purpose-built facility located right alongside these tracks. We believe we could benefit from being able to receive our bulk materials by rail.

As a Washington craft distiller, all of our ingredients are sourced within the state. Our grain farmer and rickhouse are in Quincy, which is on the BNSF Railway east-west mainline. Although our expected volume of a car or two of grain per month is nominal today, we expect to continue our rapid production growth. Additionally, we will evaluate the rail delivery of our glass products and wooden barrels, which will add car volume.

We firmly believe that rail will be cost effective versus trucking because grain is already moved across Washington via rail, and this will eliminate the truck transfer and associated costs. Importantly, even if the costs are the same, rail is preferable because the use of rail cars would be consistent with our branding and image that we've worked hard at creating.

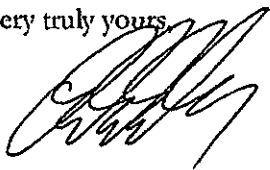
Given the line or a future spur is uphill from our adjacent facility, grain will naturally flow downhill facilitating movement to storage bins and reducing our handling costs. We recognize that direct service from the line may be used initially and that long-term, a spur will be needed. We plan on working with the

railroad in the layout and construction of a spur immediately north of our facility where there is more than ample space available.

We are ready, willing and able to execute a transportation agreement with the railroad upon reactivation of this line segment.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Orlin Sorensen', written over the closing 'yours'.

Orlin Sorensen
President



.....
GENERAL MILLS

September 26, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

I am writing in support of requests to restore rail service direct to Bellevue, Washington. We currently deliver bulk truckloads of flour to a large customer there, and delivering by rail would be a large environmental and competitive benefit.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Brenda Mengelkoch".

Brenda Mengelkoch

Bakery Flour Sales Supervisor
General Mills



Since 1972

12418 N.E. 124th ST.
P.O. Box 2849
Kirkland WA 98083
(425) 823-1444

February 13, 2014

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

REF: STB FINANCE DOCKET NO. 35731
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

Please accept this verified statement as my final words in support of reactivating the rail line segment between Woodinville and Bellevue, Washington.

1. There was never any outreach or public discussion regarding potential freight use in the rail corridor. Thus, I did not know freight rail service was a possibility.
2. I believe rails and trails are the best use of the Eastside Rail Corridor.
3. I'm told a spur and load/unload area can readily be constructed inside the right-of-way, and RJB will partner with the railroad in its layout and construction.
4. I understand and agree with the conservative car estimate of 30-40 *per annum* used by the railroad in its "STB Reactivation Letters Filed" log.
5. RJB will benefit from direct rail service, and I would like to have it as soon as possible.

Thank you for your consideration.

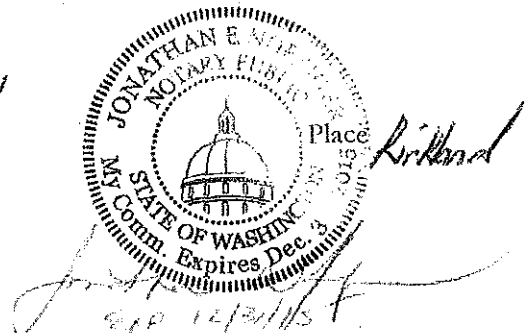
Very truly yours,

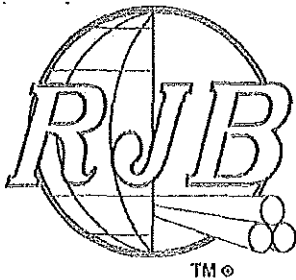
A handwritten signature in cursive script, appearing to read 'Nick Beck'.

Nick Beck
President
RJB Wholesale

Date

2/13/14





20 August 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW, Room 1034
Washington, DC 20423-0001

PETITION FOR RECONSIDERATION

REF: STB FINANCE DOCKET NO. 35731/ Docket No. AB 6(Sub-No. 465X)
BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

RJB Wholesale, Inc.(RJB), hereby notifies the Board that we are petitioning for reconsideration of the Board's decision of 1 August denying Ballard Terminal Railroad Company's (Ballard) request for an injunction to prevent the City of Kirkland, Wash., from salvaging 5.75 miles of track over which Ballard is seeking authority to reinstitute freight rail service. We allege that the Board erred in not considering the impact on RJB of removing the rails which adjoin our facility, when we have previously stated to STB our interest in obtaining freight rail service from Ballard over these very tracks. It is inconceivable to us that the Board would even consider allowing the rails to be removed by Kirkland prior to the Board's full consideration of the reactivation request and circumstances. We further allege that it was error for the Board to partially base its decision on Kirkland's unsubstantiated claims of possible harm from further delay of the decision on the requested injunction. Contrary to the Board's conclusion, we believe that Ballard has in fact demonstrated adequate support for delaying a ruling on its preliminary injunction request, or alternatively, granting the injunction immediately.

In June, we wrote to the Board in support of Ballard's proposed rail line reactivation and expressed our interest in receiving our product inventory by rail. The Board in its decision failed to mention us as a 'prospective shipper', even though our business is located on the Line and is a 'conventional' rail customer. Our current product volume exceeds 10,000 tons/year. As we pointed out, most of our pipe already ships from factories by rail, requiring additional cost to transload to our trucks for delivery to our distribution yard. So, the Board is in error in stating (on P. 6) that the record fails to show that there actually are "...customers 'ready willing and able' to use freight rail service". We are such a customer, in an industrial zone, yet Kirkland never inquired about our potential use of the adjacent rails. While we may not have a rail spur into our facility today, we are quite ready and financially able to participate in the cost of such an improvement to our facility. In fact, we would welcome that opportunity to upgrade our distribution operations with rail shipping.

Regarding Kirkland's claim of financial and other harms that would befall it if they were required to wait to begin salvage operations, it seems questionable to us. Kirkland is located in an area of the Pacific Northwest with a temperate, marine climate. We are a construction-related business. Low technology construction activity, such as rail salvage, can be conducted virtually year-round here. Considering that the City went through a public bidding process to select a salvage contractor, we are quite sure that the chosen firm would gladly extend their offer a few months in order to hold on to the rail removal contract, which would be quite lucrative to them. The Board also repeats Kirkland's claim that a "delay in proceeding with these plans will result in costs to the City's taxpayers..." In today's climate of extremely

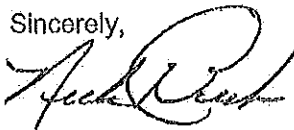
low interest rates and negligible inflation of construction costs, this appears unlikely, too. Besides, people are already walking along the tracks today. And trails co-exist with trains in freight rail corridors in many locales. We don't see any real harm to the City from a slight delay in your overall decision regarding reactivation vs. track removal. On the contrary, we see real harm to local industry's freight mobility from the threatened loss of rail service, which Kirkland falsely claims isn't feasible.

The potential 'harm' to King County and Sound Transit is even harder to quantify. Nothing in Ballard's reactivation proposal would substantially interfere with those agencies' plans. Ballard has made clear that they support 'Rails with Trails', and so do we. Consider also that an intact Woodinville Subdivision rail line offers the possibility of future (circa 2023) commuter trains feeding customers to Sound Transit in Bellevue. What is the real harm to other interested parties? We submit that there isn't any. Where is the proof of the parties' claim, restated by the Board, that they have "invested years and millions of dollars of public funding toward their interim trail use and other public projects in the area the Line traverses"? King County only consummated their purchase of a portion of the Line's right-of-way this year. They still have not completely paid for it, and don't expect to for a few years. King County also doesn't yet have a Master Plan or trail design for their part of the corridor. We submit that the Board erred in giving credence to their arguments.

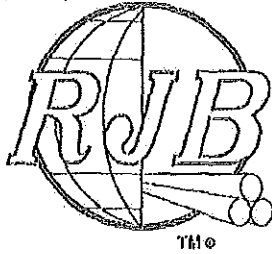
We appreciate that a case such as this presents the Board with many competing interests and arguments. However, it appears to us that Ballard's request for authority to reinstate freight rail service on this Line and expand its service territory is sound, and comes from a bona fide and solvent rail operator. Considering the extreme financial barrier to entry that would be posed by prior removal of the rail assets, it is vital for the STB to protect them during these proceedings. Shouldn't that be the Board's default position on these matters? For the reasons stated herein, we therefore respectfully request that the STB grant this petition for reconsideration of its August 1st decision in this matter, and immediately enjoin Kirkland from instituting any further salvage operations on or along the Line, pending the Board's final action on Ballard's Acquisition and Operation Exemption request.

Thank you for your consideration of our petition and of our interest in obtaining freight rail service from Ballard Terminal Railroad into our trackside facility in Kirkland.

Sincerely,



Nick Best
President



17 June 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

RJB Wholesale Inc., established in 1973, is the Western United States leading supplier of steel and PVC pipe to the wholesale distributor market. Our complete line of fittings meets the needs of a diverse group of industries. Additionally, RJB Wholesale supplies a full line of water well casing and drilling products. In 2012 our gross revenue exceeded \$15 million. Please refer to our Web-site at <www.RJBWholesale.com>. Our company headquarters site, including warehouses and storage yard, adjoins the southerly right-of-way line (railroad east) of BNSF Railway's former Woodinville Subdivision, just east of 124th Ave. NE, in Kirkland, Washington.

We recently became aware that Ballard Terminal Railroad is attempting to save these tracks and resume freight service on the line. So, we are writing to the Surface Transportation Board in support of Ballard's above-captioned petition to reactivate the Woodinville Subdivision between Woodinville and Bellevue, Washington. We support this reactivation because we would like to start using that rail line for receiving our product inventory, and possibly for shipping completed orders to customers. Last year we sold and distributed about 10,000 tons of pipe and other materials. Much of our bulk product is initially shipped from the manufacturer by rail, but it must currently be trans-loaded to one of our flatbed trucks in either Kent or Puyallup. Last year, we received about 26 rail cars of product. We expect 2-3 carloads per month going forward. To bring this material to our Kirkland yard, RJB trucks make over 90 trips to the trans-load sites annually, taking on average 2.5-3 hours each. Considering the constant congested traffic conditions in King County, it would save us a lot of money to be able to have those same rail cars of pipe delivered directly to our Kirkland yard. Obviously, that would make our business more competitive. It would also help us do our part towards reducing local traffic congestion and air pollution. Surely preserving and using the existing railroad infrastructure has a much higher economic return to our region than removing it and turning it into yet another expensive trail, as the City of Kirkland proposes.

We respectfully request that the STB grant Ballard's petition to reactivate this segment of rail line. We would be happy to answer any question you may have about our operations and our interest in shifting to freight delivery by rail to our facility.

Sincerely,

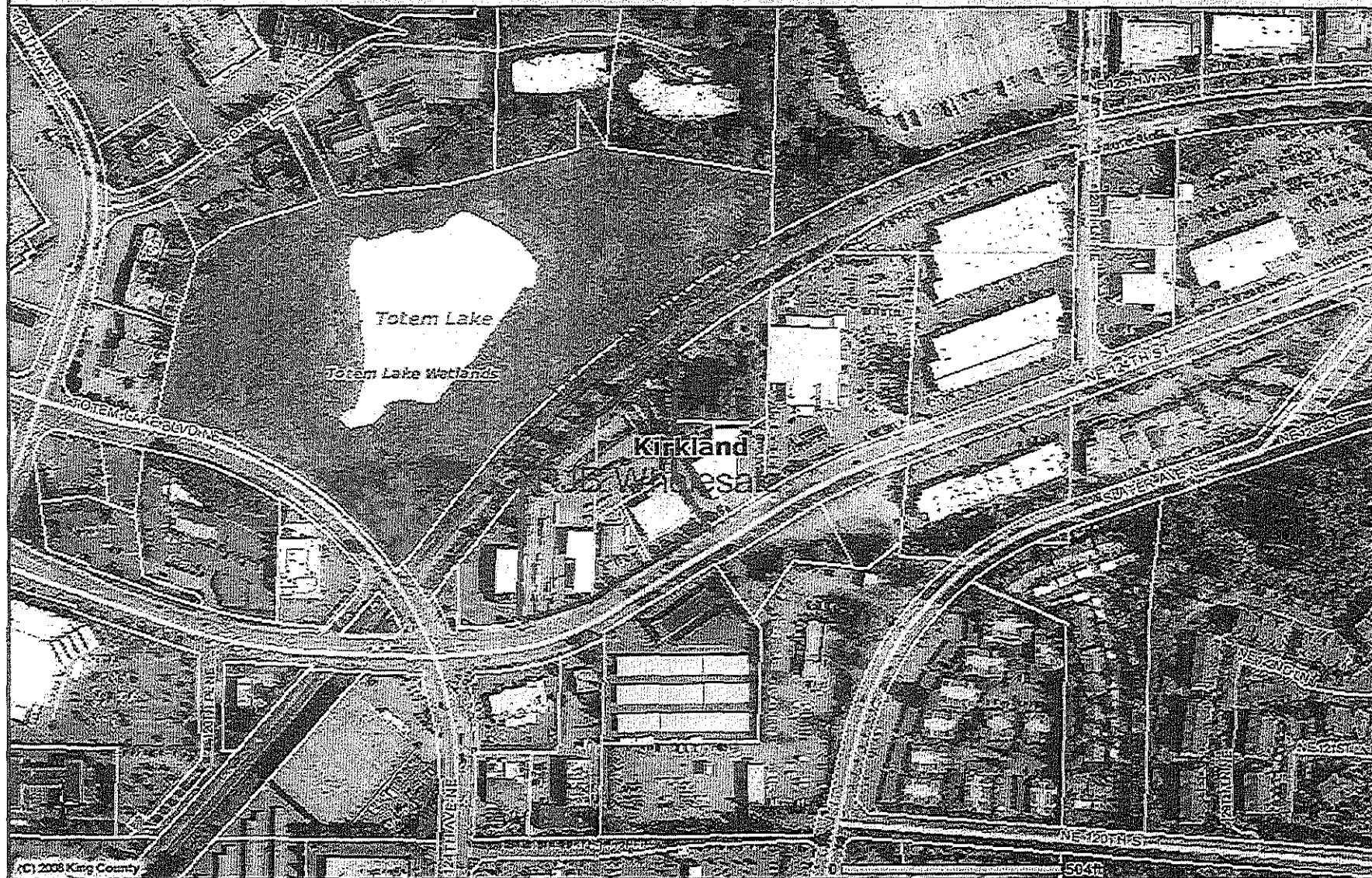
Nick Beck
by: *[Signature]*
Nick Beck
President
Enclosure: Site Map, RJB Wholesale

PIPE

(425) 823-1444
FAX (425) 821-7353

P. O. BOX 2849
12418 N.E. 124TH ST.
KIRKLAND, WASHINGTON 98003

RJB Wholesale site



(C) 2008 King County

COMMENTS: Attachment to letter to STB supporting reactivation of Woodville Subdivision from Woodville to Bellevue

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Date: 6/13/2013

Source: King County iMAP - Property information (<http://www.metrokc.gov/GIS/IMAP>)



RJB Wholesale site

	County Boundary		Parcels	Legend	
	Mountain Peaks		Parks		R-12 - Residential, 12 DU per acre
	Highways		Unincorporated KC Zoning		R-16 - Residential, 16 DU per acre
	Forest Production District Boundary		A-10 - Agricultural, one DU per 10 acres		R-24 - Residential, 24 DU per acre
	Agricultural Production District Boundary		A-35 - Agricultural, one DU per 35 acres		R-48 - Residential, 48 DU per acre
	Urban Growth Area Line		F - Forest		NB - Neighborhood Business
	Incorporated Area		M - Mineral		CB - Community Business
	Streets		RA-25 - Rural Area, one DU per 5 acres		RS - Regional Business
	Highway		RA-5 - Rural Area, one DU per 5 acres		O - Office
	Arterials		RA-10 - Rural Area, one DU per 10 acres		I - Industrial
	Local		UR - Urban Reserve, one DU per 5 acres		Other
	Lakes and Large Rivers		R-1 - Residential, one DU per acre	2009 Color Aerial Photos (6in)	
	Streams		R-4 - Residential, 4 DU per acre	2009 Color Aerial Photos (12in)	
	Tribal Lands		R-6 - Residential, 6 DU per acre		
			R-8 - Residential, 8 DU per acre		

(cont)

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Date: 6/13/2013 Source: King County IMAP - Property Information (<http://www.metrokc.gov/GIS/IMAP>)



- [HOME](#)
- [PRODUCTS](#)
 - [Steel Pipe](#)
 - [PVC Pipe](#)
 - [Malleable Iron Fittings](#)
 - [Steel Couplings](#)
 - [Steel Pipe Nipples](#)
 - [PVC Fittings](#)
 - [Bentonite](#)
 - [Valves](#)
 - [Well-Drilling Supplies](#)
 - [Fire Protection](#)
- [EXCESS INVENTORY](#)
- [CONTACT US](#)
- [YOUR CART \(0\)](#)
- [Credit Application](#)
-

12418 N.E. 124th St.
Kirkland, Washington, 98034, US

T 800.875.0431
F 425.821.7353

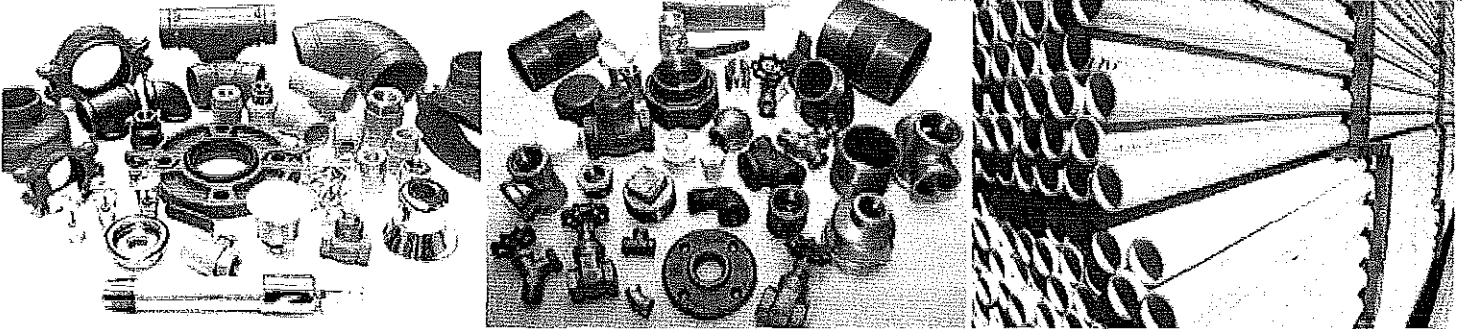


Our Products

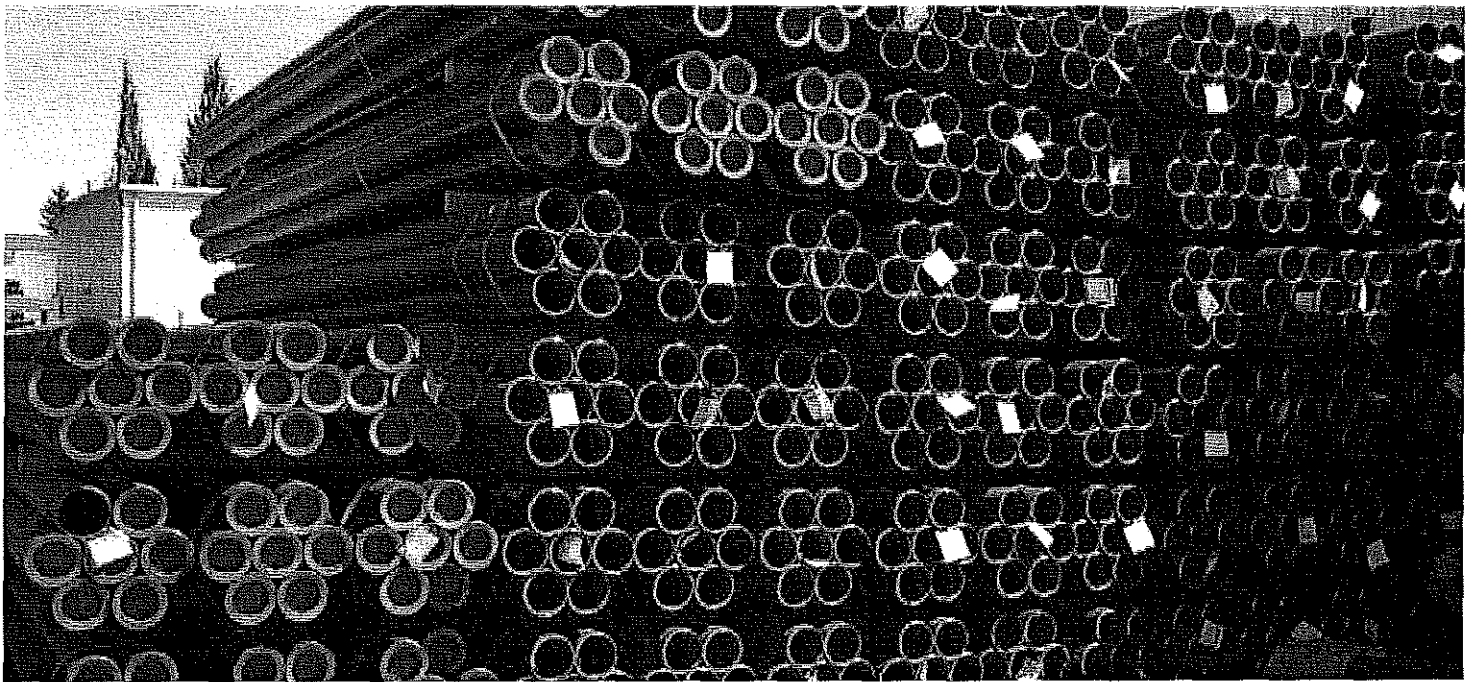
- [Steel Pipe](#)
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- [Steel Couplings](#)
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Delivery to your door by our fleet of trucks



RJB Wholesale Inc., established in 1973, is the Western United States leading supplier of steel and PVC pipe to the wholesale distributor market. Our complete line of fittings meets the needs of a diverse group of industries. Additionally, RJB Wholesale supplies a full line of water well casing and drilling products. RJB is the recognized leader in service and quality. We take tremendous pride in the relationships forged with our customers and vendors.



© 2011 RJB Wholesale, Inc. [Privacy Policy](#)



October 8, 2013

Ms. Cynthia Brown, Chief
Surface Transportation Board
395 E. Street SW, Room 1034
Washington, DC 20423-0001

Re: STB Docket No. 35731
Ballard Terminal RR Company, LLC
Acquisition & Exemption, Woodinville Subdivision

Dear Ms. Brown:

On behalf of our company, I wish to request from you favorable consideration to a request from Ballard Terminal Railroad Company, LLC to the Surface Transportation Board to reactivate rail service between the cities of Woodinville and Bellevue, Washington.

Aggregates West, Inc., a major supplier of aggregate and trucking services in the referenced region, would like you to consider the economic benefits associated with reactivation by utilizing a rail corridor for the transport of aggregate and other valuable commodities in an already heavily-congested area when rendering your decision. Further, we support and request that consideration be given to utilizing a reactivated corridor for rails with trails.

Should you have any questions or require additional information, please contact me at 360-966-3641 or the address written below. Thanks you for your consideration of our request.

Sincerely,

Scott Day
Sales Manager

Copies: C. Hatch
Honorable Senator Patty Murray
Honorable Senator Maria Cantwell

"));

Suppliers of Landscape Rock,
Washed and Crushed Gravel Products
Ask about our Spring Special

Aggregates West supplies customers with a wide array of services and specialty products. We have gravel delivery truck and transfers, pup trailers, end dumps, fifth wheel trucks and low bed service. Aggregates West also has a CAD, conveyored Aggregate Delivery system truck, which delivers and places material into difficult to reach areas. Our CAD truck offers limited *wasted materials and saves your company labor, time and money*. The CAD will place the material of your choice, to grade, so there is no need to handle the product twice. With the average spread of placement time of 15 minutes, the cost is actually less than half of normal delivery.

**We are proud to serve
home owners, landscapers and
small to large contractors**

Aggregates West is a major supplier of several different types of materials, from crushed and washed sand and gravel, golf course top dressing, silica trap sand, quarry rock for landscaping to horse arena mixes. We have the ability to deliver a vast range of product to almost any location. Call or email our sales department for a quote, or use our [gravel estimator](#).

C Sales Inc

7227 W BOSTIAN RD

T WOODINVILLE WA 98072-6008
Ph (425) 483-0101 Fx (425) 485-9131

October 1, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW, Room 1034
Washington, DC 20423-0001

REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

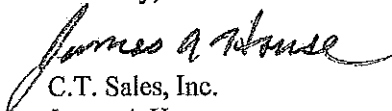
Our company, CT Sales, Inc. has offices and a fab shop located alongside the tracks of the former BNSF Woodinville Subdivision, currently served by Ballard Terminal Railroad (BTR). We are writing to urge the Board to preserve and enhance the freight rail service along this line by granting BTR's pending petition to extend their operations south of Woodinville by reactivating that rail-banked line to Bellevue.

CT Sales has existed in its present form since 1981. We fabricate steel reinforcing bars (rebar) from straight mill stock, cutting and bending the bar to meet the specifications of various concrete construction projects in the region. Last year we processed and shipped about 8,300 tons of finished re-bar, but this is still down from our high of about 14,000 tons in 2007. This year we will do about \$10M in business. We employ roughly 20 people in family-wage jobs.

Much of our bar stock is purchased directly from Cascade Steel Rolling Mills in McMinnville, Oregon. That mill is served by the Union Pacific Railroad. It is our understanding that they could ship product to us directly by rail via UP, BNSF & BTR, with a savings in freight charges as compared with trucking. We estimate that each rail car of re-bar would replace about 2.5 truckloads. Receiving rebar via rail will allow us to more easily handle longer lengths for construction projects. It is conceivable that we could also ship finished fabrications out to Bellevue and more distant customers by rail, although more research is needed. In any event, we are actively pursuing receiving rebar by rail, which would help us bolster the revenue picture for BTR, while lowering our cost of goods sold. The fact that we would also be helping to reduce air pollution and truck congestion on I- 5 between Oregon and Washington is a plus.

We hope that the STB will see fit to grant Ballard's petition to reactivate freight rail service into Bellevue. Meantime, please contact me with any question you may have about our operations, or about how we believe our business economics would be improved by adding the ability to receive raw materials and ship product by rail.

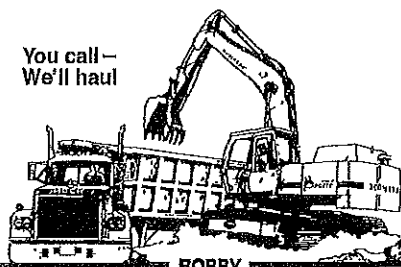
Sincerely,



C.T. Sales, Inc.
James A House
President

22014 West Bostian Rd.
Woodinville, WA 98072
(425) 827-7530/481-1800
FAX # (425) 486-6613

You call —
We'll haul



- 40 / 50 yard Debris Trailers
- Lowboys
- Belly Dumps
- Track Hoes, Loaders & Dozers

BOBBY
WOLFORD
TRUCKING AND DEMOLITION, INC.

March 27, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Dear Ms. Brown:

Bobby Wolford Trucking (BWT) was founded in 1972 to provide general demolition and trucking services, primarily to the real estate development industry. Since then we have added full recycling service for construction debris (such as concrete), land clearing debris, and the like. We are a Snohomish County certified "Intermediate Solid Waste Handling Facility" and processor of these materials. Our processing yard is located in Maltby (Snohomish County), alongside the BNSF railroad's former Woodinville line, now known locally as the Eastside Rail Corridor (ERC).

I am writing to stress the importance of restoring rail service to the next segment of the ERC, between Woodinville and Bellevue, Washington, a rail line that is currently inactive and rail-banked. We very much support continued freight use and enhancement of the entire ERC. In fact, we have started planning with the current railroad operator, Ballard Terminal Railroad (BTR), to construct a spur track from the main rail line directly into our recycling yard. This would allow us to both receive material to be recycled from up and down the corridor, as well as to economically ship out sorted and processed materials by rail to their final disposal point, e.g., land fills in southern Washington.

Ms. Cynthia T. Brown
March 26, 2013
Page 2

There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of the next several years. These projects, plus multiple new high-rise buildings, will necessitate the export of hundreds of thousands of cubic yards of excavated materials, building demolition waste, and roadway grading spoils. We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons. A future light rail system with a tunnel and "cuts" are within one mile of the railroad, and will also require substantial movement of spoils and raw materials. Additionally, we anticipate ongoing construction projects in the future, on a regular basis. We estimate the volume of these projects at over three million cubic yards of construction spoils over the next several years.

We need to have the rail line intact to provide this service and to be able to bid on these important projects. We have already estimated that our bid would be at least 15% less expensive to our clients than the trucking option. For us to provide competitive and viable bids, we need the rail intact and active.

We have consulted with Eastside Community Rail (ECRR), the owner of the rail freight easement in the corridor, about the logistics of moving large quantities of excavated material from construction projects in King County by rail for direct placement as road or trail base alongside their existing railroad embankment, mainly in Snohomish County. BWT has extensive experience hauling for excavation contractors. We agree with ECRR that using rail to replace thousands of long truck hauls to dump sites would greatly reduce traffic congestion and wear on the region's highways, and would obviously reduce air pollution from diesel exhaust, too. Since the ERC runs right through areas of King County where there will be many large construction projects, it makes sense to use rail cars to move excavated material out of and some bulk construction materials in to those project areas. In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of construction materials. Sole use of an already overburdened highway system, which is one of the worst in the country, via truck transportation is neither efficient, cost-effective nor particularly safe.

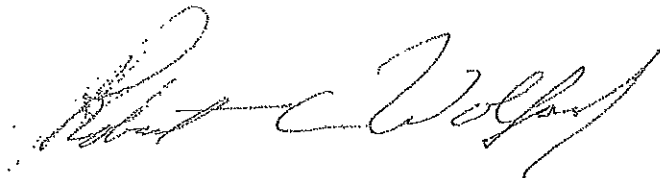
Ms. Cynthia T. Brown
March 26, 2013
Page 3

In conclusion, even though we are a trucking company, we see the benefit to all of us of maintaining a functioning, thriving railroad through the east side of both King and Snohomish Counties, and keeping our communities connected by rail to the rest of the country. We also support the multiple uses of this public corridor, like trails, or some form of passenger rail services, that so many other agencies are planning. The opportunity to utilize the Eastside Rail Corridor as a viable option for the movement of construction materials is very advantageous for this region of the Puget Sound. We look forward to a strong future for economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be utilized will help CalPortland, Ballard Terminal Railroad, Eastside Community Rail and others provide service to the community in the most efficient manner possible. The resumption of rail service to Bellevue would also promote the responsible reduction of truck exhaust emissions and wear to the region's roads.

Thank you for considering our position to reactivate the rail corridor for our business and for the community.

Very truly yours,

Bobby Wolford

A handwritten signature in dark ink, appearing to read 'Bobby Wolford', written over a light blue horizontal line.

Owner
Wolford Trucking and Demolition



August 16, 2013

Mr. Douglas Engle
Managing Director
Eastside Community Rail

Dear Mr. Engle,

The opportunity to utilize Eastside Community Rail as a viable option for the movement of construction aggregate materials is a very advantageous option for this region of the Puget Sound. We look forward to a strong future for the economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be an option will allow both CalPortland and Eastside Community Rail to service the community in the most efficient business methods possible for the Snohomish and east King County region. CalPortland utilizes the movement of construction materials throughout the Puget Sound via barge to various sites in Everett, Kenmore and Seattle which reduces Truck and trailer traffic on the regions roads by eliminating 167 truck and trailers per barge load. The addition of Rail in this ability to service the Eastside corridor would continue this responsible reduction in fuel emissions and wear to the regions roads.

Sincerely,

Michael Skrivan

Michael Skrivan
Aggregate Sales Manager
Materials Group – Northwest Division
CalPortland



March 25, 2013

Ms. Cynthia T. Brown
 Chief, Section of Administration
 Office of Proceedings
 Surface Transportation Board
 395 E Street, S.W., Room 1034
 Washington, DC 20423-0001

Dear Ms. Brown:

I would like to stress the importance of restoring rail service to the rail line segment between Woodinville and Bellevue, Washington via a rail line that is currently railbanked.

CalPortland is a major building materials and construction/services provider to the Western United States and Canada. We provide construction services and materials to a multitude of projects in the State of Washington generally, and in the area of Seattle, Washington, specifically.

There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of the next several years which will necessitate the import of hundreds of thousands of cubic yards of construction aggregate materials to produce buildings, developments and roadways that are in strict accordance with all specifications for engineering parameters. We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons. Additionally, we anticipate ongoing projects in the future, on a regular basis.

In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service to Bellevue is critical. Restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of these various construction materials. Use of an already overburdened highway system via truck transportation is neither efficient or very cost-effective.

The opportunity to utilize Eastside Community Rail as a viable option for the movement of these materials is a very advantageous option for this region of the Puget Sound. We look forward to a strong future for the economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be utilized will allow



Ms. Cynthia T. Brown
March 26, 2013
Page 2

CalPortland, Ballard Terminal Railroad and Eastside Community Rail to service the community in the most efficient business methods possible for the Snohomish and east King County region. The addition of rail access would also promote the responsible reduction in truck fuel emissions and wear to the regions roads.

Very truly yours,

Michael Skrivan

Aggregate Sales Manager
Materials Group – Northwest Division
CalPortland

LEGISLATIVE AND MUNICIPAL **SUPPORT**

State of
Washington
House of
Representatives



Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

December 5th, 2013

Re: Finance Docket No. 35731
Ballard Terminal Railroad Company, LLC-Acquisition and Operation Exemption—Woodinville
Subdivision

Docket No. AB-6 (Sub-No. 465C)
BNSF Railway Company—Abandonment Exemption—in King County, WA

Dear Ms. Brown,

We are writing to you as members of the Washington State Legislature concerned about preservation of Washington's rail infrastructure. As convening members of Washington's Legislative Rail Caucus, our interest in the issue before you stems from the mission of the Caucus to promote public awareness and legislative action in support of rail infrastructure as a public transportation asset.

The Eastside Rail Corridor represents a section of a regional rail network situated within a rapidly growing region. This corridor has potential capacity to accommodate opportunities for economic development, recreation, and road traffic mitigation in the corridor's communities. With this in mind, we remind you of the legislative support for rail as an often overlooked keystone of our trade-dependent state's aggregate transportation and freight mobility infrastructure, of which short line railroads are an important component.

We encourage you to fully consider the case for reactivating the Eastside Rail Corridor.

Sincerely,

Two handwritten signatures in black ink. The first signature, on the left, is "Luis Moscoso" and the second, on the right, is "Matt Manweller".

Rep. Luis Moscoso

Rep. Matt Manweller

State of
Washington
House of
Representatives



April 2, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

Re: Finance Docket No. 35731
Ballard Terminal Railroad Company, LLC-Acquisition and Operation Exemption—Woodinville
Subdivision

Docket No. AB-6 (Sub-No. 465C)
BNSF Railway Company—Abandonment Exemption—in King County, WA

Dear Ms. Brown,

We are writing to you as members of the Washington State Legislature concerned about preservation of Washington's rail infrastructure. While we appreciate the depth and breadth of the community engagement that the City of Kirkland has embarked upon in the last few years, we encourage the joint development of rail freight, commuter, and excursion uses in conjunction with trail uses on the Eastside Rail Corridor.

Our concerns stem from our belief that existing transportation infrastructure must be retained. We share the concerns of the Eastside TRailway Alliance as expressed by co-chairs, Snohomish Mayor Karen Guzak and Woodinville Councilmember Les Rubstello. Specifically, the imminent removal of the 5 mile section of track by Kirkland is counter to facilitating Snohomish-King County discussion on coordinated investments in rails and trails.

We believe that the Eastside Rail Corridor represents an irreplaceable resource and opportunity for the communities along the Corridor and throughout the region. We are also mindful of the efficiencies and carbon offsets inherent in rail transport. Specifically, there are numerous public and private projects in Bellevue that could use this rail corridor to reduce emissions and wear and tear on roadways. Put simply, this unique right-of-way provides opportunities for both economic

State of
Washington
House of
Representatives



development and recreation while fostering vibrant communities and serving the region's growing transportation needs.

Community and business interests have pointed out to us that the Eastside Rail Corridor is a community asset of great potential value once existing sections are restored sufficiently. In light of these numerous benefits, we support the effort to improve rail between the cities of Snohomish and Woodinville as a first step in realizing this potential.

As strong supporters of integrating trail and rail links, and all of the opportunities they provide, within and between our communities, we encourage a complete and inclusive dialogue between all stakeholders along the Eastside Rail Corridor.

Sincerely,

Rep. Luis Moscoso

Sen. Rosemary McAuliffe

Rep. Gael Tarleton

Rep. Mike Sells

Rep. John McCoy



**Snohomish County
Executive Office**

Aaron Reardon
County Executive

(425) 388-3460
FAX (425) 388-3434
MS #407
3000 Rockefeller Avenue
Everett, WA 98201-4046

March 21, 2013

To Whom It May Concern:

Snohomish County strongly supports multiple purpose use of the Eastside Rail Corridor, including trail, commuter rail, excursion rail, and freight. Snohomish County demonstrated its support for this corridor in 2009, granting GNP Railway the right to operate on the portion of the corridor owned by Snohomish County in the City of Snohomish. Snohomish County hosted a Rail Summit in 2011 that gathered community leaders to discuss the positive use and impact of actively using the rail corridor. Snohomish County is actively engaged in the regional discussion of the corridor, participating in the TRailways coalition and attending the advisory council created by King County.

Snohomish County's Centennial Trail is the crown jewel of the county's trail network, used by many thousands each year. The Centennial Trail starts at the border with Skagit County and currently ends in the City of Snohomish. We, and the City of Snohomish, are excited by the prospect of connecting the Centennial Trail to the Sammamish River and Burke Gilman Trails in King County by acquiring and building a trail adjacent to the track in the Eastside Rail Corridor from Snohomish to Woodinville. Snohomish County is actively negotiating the purchase of a trail easement in the Snohomish County portion of the rail corridor. The Port of Seattle and the County have exchanged letters of intent, and we expect to close the purchase in a few months. The County is moving forward with project financing for both the acquisition and the development of the trail. We look forward to demonstrating that rail and trail can happily co-exist adjacent to each other, as it does in Marin County and Escondido, California. Connecting the Centennial Trail to the Sammamish River and Burke Gilman Trails will be a major benefit to the entire region.

Several hundred jobs in Snohomish County currently depend upon rail access for freight. These jobs are important for our community and we strongly support maintaining the corridor for freight.

Approximately half of the Snohomish County residents who commute to King County reach their jobs in King County by travelling south down I-405. Using the Eastside Rail Corridor for commuting would reduce vehicular congestion, improve air quality, and reduce the region's carbon footprint. Whether diesel motor units or other types of rail cars are used, the corridor is an exciting opportunity to develop and implement commuter transportation far faster and cheaper than usual in Puget Sound.

Excursion rail service, such as proposed by Eastside Community Rail, is an exciting opportunity for economic development along the corridor. The service would tie the wine district of Woodinville to historic Snohomish, substantially increasing tourism in both King and Snohomish County. Excursion service is important to Snohomish County and we strongly support action to start the service.

Eastside Community Rail advises Snohomish County that it would like to assist development projects in the Bellevue area by providing economical and environmentally friendly freight rail service, specifically to transport construction spoils from large excavation projects. Community Rail could use these spoils to create a maintenance-of-way road alongside the track in Snohomish County, which could then serve as the base for the trail linking Snohomish to the Sammamish River Trail. This synergy saves money and substantial time in creating the trail.

Two significant barriers impede the start of excursion rail service and the fastest, cheapest rail development from Woodinville to Bellevue: the condition of the track and Kirkland's intent to remove the rails in Kirkland. The track is currently classified as "excepted", precluding passenger traffic. Community Rail desires to upgrade the track to class 2, which would allow passenger rail traffic up to thirty miles per hour. Community Rail estimates the cost of upgrading the track from excepted to class 2 status at almost \$6 million.

Although Snohomish County cannot practically or legally fund this work, Snohomish County strongly supports Community Rail's attempts to obtain grants for the track upgrade. The track needs to be improved to achieve the community's vision.

Kirkland has repeatedly and publicly stated its commitment to maintain the corridor for both commuter transportation and a trail. Kirkland is moving forward with its trail and additional planning because the citizens of Kirkland voted to tax themselves to create a trail. Snohomish County acknowledges and respects the decision of Kirkland citizens to develop its portion of the corridor as expeditiously as possible.

Kirkland's removal of the rails would obviously break the line, preventing rail service into and south of Kirkland, whether for excursion, commuter or freight. Although we wish it were otherwise, commuter rail does not appear to be feasible until the project is included in Sound Transit's list of projects approved by the voters. An additional impediment to commuter service from Snohomish County is the fact that Sound Transit's territorial jurisdiction ends at the King

County/Snohomish County border in Woodinville. While it is possible for an entity other than Sound Transit to provide commuter rail service (e.g., Community Rail using diesel motor units), such commuter service could not occur in any event unless and until the tracks are upgraded and unless and until a sufficiently capitalized entity is willing to provide the service. Kirkland will not remove the ballast, but will merely remove the track. Kirkland has publicly assured the corridor community that it supports contemporaneous rail use and will support rail use as soon as a feasible, practical plan is put forward.

Freight use of the corridor for removal of construction excavation spoils from Bellevue would benefit Snohomish County and Snohomish County therefore supports such use. Although freight service from Bellevue north will be problematic if Kirkland picks up the track, the rail line in King County is railbanked. The rail corridor through Kirkland could be reactivated as soon as a practical, feasible, tangible and economically viable plan for freight use of the track is brought forward.

In summary, Snohomish County supports use of the Eastside Rail Corridor for freight, excursion and commuter rail service and for a trail. Snohomish County is moving forward to develop a trail and supports grant requests to upgrade the track. Snohomish County will continue to work with other agencies to develop this important public asset.



Peter B. Camp
Executive Director



CITY OF SNOHOMISH

Founded 1859, Incorporated 1890

116 UNION AVENUE SNOHOMISH, WASHINGTON 98290 TEL (360) 568-3115 FAX (360) 568-1375

February 26, 2013

Sen. Rosemary McAuliffe
403 Legislative Building
PO Box 40401
Olympia, WA 98504-0401

Dear Hon. Sen. McAuliffe:

Thank you for meeting with City Councilmember Dean Randall, City Manager Larry Bauman and me in your Capitol office on February 14. We appreciate your interest in the Eastside Rail Corridor's potential for improvements that will make public passenger services feasible as well as help to preserve the corridor for freight use and trail development.

We want to reiterate and provide additional information that supports our request for \$6.26 million in state capital funding needed to upgrade the Eastside Rail Corridor, which is owned by the Port of Seattle and other local governments in the region. We believe that it is important for state leaders to understand that no private company will invest in publicly owned rail infrastructure because it cannot be used as collateral to secure the investment. However, until such public investment is found to upgrade these tracks, passenger service is not feasible due to deteriorated track conditions that must first be repaired.

The \$6.26 million will be used along nearly 15 miles of track between Woodinville and Snohomish. This is a great short term jobs program and is a financial bargain: to lay more ties for a smoother ride, upgrade 11 bridges, 10 crossings, and do the ditching and brush cutting required to run passenger trains up to 30 miles/hour. That averages about \$400,000 a mile – a fraction of the cost of highway upgrades.

Furthermore, the potential exists for easily achieved multi-modal uses of the corridor. Sufficient rights of way exist in nearly all sections of corridor to provide ample room for rail and trail uses to exist side by side. Connecting this corridor to such trail systems as the Tolt-Pipeline Trail and Centennial Trail offers exciting opportunities to expand one of the fastest growing personal transportation and recreational developments that is transforming our region. Snohomish County is currently exploring funding options to purchase the northern section of this rail corridor for combined rail and trail uses.

Eastside Community Rail, the current operator that is working under agreements with the Port of Seattle to provide freight service and initiate excursion services on the rail corridor, is committed to ongoing track maintenance costs of \$1.1 million annually once these tracks are upgraded to passenger rail status. Our city government sees the Eastside Rail Corridor as a nearly unprecedented opportunity for public use of a rail system that in recent decades has been

underutilized. The ultimate vision and future goal of our local government and many others in the region is to see this corridor developed and extended to provide commuter rail services between Bellevue and Everett. This can be achieved at a fraction of the capital costs of Sound Transit's existing commuter rail services. That is why we need your support and efforts this legislative session.

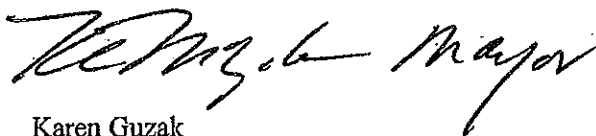
Improving the tracks now will pave the way for future expansions of passenger services for this rail corridor. The risks of allowing this corridor to deteriorate and be carved up or severed at this time are significant. Your involvement at this time could be the most important action that could be taken to ensure that the broadest public uses of these rails will be possible both near term and in the decades to come.

The recently formed Eastside TRailway Alliance—composed of local governments, business associations, wineries, and various groups committed to both rail and trail development—is devoted to seeing the Eastside Rail Corridor improved and expanded for public benefit. Few public projects in our region have attracted as much public support and interest as has this corridor. Few corridors of this type provide such opportunity for public benefit.

We would appreciate your active support in helping our region maximize the public investments that have already occurred on the Eastside Rail Corridor. Devoting \$6.26 million in state funds at this critical juncture might just be one of the best investments the state could possibly make during this legislative session—or possibly any other session, at least in recent times—for cost-efficient transportation services.

Please let us know if we may be able to provide additional information that would support this request or assist you in your work on behalf of the people of our state.

Best regards,

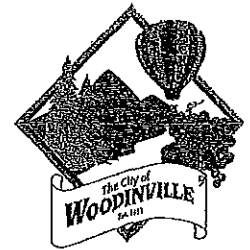
A handwritten signature in cursive script, appearing to read "Karen Guzak Mayor".

Karen Guzak
Mayor

cc: Snohomish City Council
Woodinville City Council
Bruce Agnew, Cascadia
Eastside TRailway Alliance
Eastside Community Rail

March 8, 2012

The Honorable Kirkland City Council
123 5th Avenue
Kirkland WA, 98033



Honorable City Council:

Re: Eastside Rail Corridor

The Eastside Rail Corridor has been identified as a regionally important dual use "rails and trails corridor" that could provide crucial long-term public transportation, freight, and excursion train links; as well as unsurpassed regional non-motorized recreational trail links.

It has come to our attention that Kirkland intends to remove the existing railroad tracks within the portion of the corridor owned by Kirkland to build a non-motorized pedestrian/bicycle trail. While we respect Kirkland's ownership position and desire to expedite the benefits of this corridor for its citizens; we ask that you consider delaying removal of the tracks until later this year. This corridor, particularly through Kirkland, is of great importance to Woodinville and the region.

As you know, the Eastside Rail Corridor Regional Advisory Council, of which Kirkland is a member, is currently discussing and planning the future of the corridor. We understand the Advisory Council will present its recommendations in Summer 2013 and request that Kirkland consider delaying removal of the tracks until these recommendations are known. At that time, Kirkland can determine if it is in the best interest of its citizens and the region to remove the tracks, after full consideration of regional issues and impacts.

We appreciate your consideration of our request. We offer to host a Kirkland-Woodinville Joint City Council Meeting to further discuss this matter as soon as it can be arranged.

We look forward to your response.

Sincerely,

Bernard W. Talmas, Mayor

Cc: Kirkland City Council
Kirkland City Manager
Woodinville City Council
Woodinville City Manager

LABOR UNION SUPPORT



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference — International Brotherhood of Teamsters

Washington State Legislative Board

Workplace Safety, Health, and Education

Shahraim Allen, Chairman

December 3, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 "E" Street S.W., RM 1034
Washington, D.C. 20423-0001

RE: STB Finance Docket No. 35731 – Acquisition and Exemption, Woodinville Subdivision

Dear Ms. Brown:

The Brotherhood of Locomotive Engineers & Trainmen – Washington State Legislative Board (BLET-WSLB), representing over 700 railroad employees on two Class I railroads (BNSF, UP), one municipal railroad (Tacoma Rail), one passenger railroad (AMTRAK), and one commuter operation (Sound Transit), submits these comments on behalf of our membership.

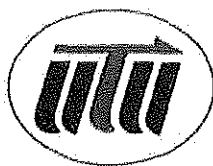
The Woodinville Subdivision has a rich historical and robust economic significance to western Washington State and the Pacific Northwest. The first rail operations on this subdivision date back 125 years to an era where passenger rail was the primary means of intrastate and interstate travel. During that golden age of railroading and continuing to present day, the Woodinville Subdivision has afforded our members many family-wage railroad jobs in passenger, local freight service, and excursion train (Washington Central Dinner Train). Unfortunately, key infrastructure (i.e. bridge) and maintenance did not keep up with the times. This led to a recent land swap that has left the future of the line in doubt.

With proper re-investment, the Woodinville Subdivision could rise from the ashes and once again be a viable multi-transportation corridor employing union crafts in rail, construction, and maintenance. That is the BLET-WSLB vision. When considering the current projected potential for rail growth in the region, and immediate rail capacity concerns related to proposed bulk commodity export facilities, the prudent course is to allow the Woodinville Subdivision to continue current rail service operations while protecting the potential for future rail options in all the categories listed above. Thank you for your careful consideration of this important matter.

Sincerely,

Mike Elliott
Brotherhood of Locomotive Engineers & Trainmen
Washington State Legislative Board

Legislative Representatives:
Local # 117 – Jourdan Marshall
Local # 161 – Brian Donald
Local # 324 – Paul McGill
Local # 426 – Darren Volland
Local # 556 – Kirk Sides
Local # 845 – Ryan Highsmith
Local # 855 – Steve Mazulo



Legislative Representatives:
Local # 977 – Gary Howell
Local # 1238 – Shane Sadler
Local # 1348 – Herb Krohn
Local # 1505 – Scott Larsen
Local # 1637 – Clyde Rosa
Local # 1713 – Dwayne Hawkins
Local # 1977 – Travis Anderson

united transportation union

SMART TRANSPORTATION DIVISION

International Association of Sheet Metal, Air, Rail and Transportation Workers

Washington State Legislative Board

Representing Railroad Train & Bus Service Employees of Washington State

11225 Roosevelt Way N.E., Seattle, WA. 98125

Washington State Legislative Board Executive Committee:

Herb Krohn – Wash. State Legislative Director – 206-713-5442 – email: hskrohn55@hotmail.com

Steve Mazulo – Assistant Legislative Director

Gary Howell – Board Chair and Alternate Legislative Director

Jourdan Marshall – Secretary-Treasurer; Clyde Rosa – Vice Chairman

December 2, 2013

Ms. Cynthia T. Brown,
Chief, Section of Administration,
Office of Proceedings,
Surface Transportation Board,
395 E Street S.W., Room # 1034
Washington, DC. 20423-0001

**REF: STB FINANCE DOCKET NO. 35731 - ACQUISITION AND EXEMPTION,
WOODINVILLE SUBDIVISION**

Dear Ms. Brown:

The reactivation of this segment of the Eastside Rail Corridor has significant long-term benefits to our Union membership. We represent approximately 2,000 members in Washington State.

We understand that many short line railroads such as Ballard Terminal Railroad Company may not provide the benefits of union membership. However, we firmly believe that there will be rail service on this line in the foreseeable future, and maintaining rail traffic will make growth easier and more acceptable to the public.

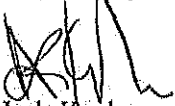
There are environmental benefits in using rail for freight service over trucks. Reestablishing the excursion train improves the quality of life in our region and facilitates greater tourism. Importantly, over 100 living wage jobs will be created with many more construction workers participating. This organization opposed closure, and fully supports local efforts and state action towards completely reopening this rail line.

Further, given the arduous traffic in the Puget Sound region, Boeing may benefit from direct transportation between their Renton 737 plant and their Everett facility. The state is keenly interested in maintaining Boeing jobs and growing them in this specific region. In 2008, the last Boeing 737 fuselage was delivered down this line. If the Board allows reactivation of this segment, there is just a single bridge, which must be replaced over I-405 to enable such service again.

We would like to impress upon the Board the importance of restoring rail service between Woodinville and Bellevue, Washington. The northern portion of the Eastside Rail Corridor can be a vital transportation link in the Puget Sound region as witness by the broad public support and freight demand, primarily in Bellevue.

Thank you very much for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Herb Krohn', with a stylized flourish at the end.

Herb Krohn

UTU/SMART Transportation Division
Washington State Legislative Director

WINERY SUPPORT

September 27, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington DC 20423-001

Docket #35731

Dear Ms. Brown,

Another use of the Eastside Rail Corridor is passenger service. Passenger service can provide additional revenue and job opportunities for the community and increase the usability of the line.

As the conductor of research of hundreds of community organizations and businesses affected by the Eastside Rail corridor, we felt it was valuable for the board to understand on how the community supports increased Eastside rail service. The general conclusion was "overwhelming support".

This area is rich in agricultural and business opportunities. More than 130 wineries, breweries, and distilleries are within a mile of the Eastside rail line.

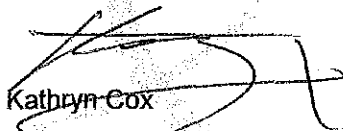
Based surveys (see Exhibit A) and marketing analysis, we developed a concept for an excursion train to be the "Bounty of Washington: Tasting Train". This excursion train service is a celebration of agriculture and viticulture of Washington the local food and wine. The "Tasting Train" can become a valuable way to enjoy the beauty of the region, the pleasure of train travel and our outstanding local foods and wines. This excursion service is an enhanced version of the Spirit of Washington Dinner Train that successfully served more than 1.4 million passengers in 14 years on one to two trains daily.

This year, we sent surveys out to 700 wineries in Washington State and with 11% response rate an almost unanimous amount (92%) would participate in the Bounty of Washington: Tasting Train. See Exhibit B for more statistics from that survey.

At this year's Taste Washington wine festival, 74 wine related professionals signed a support statement including the CEO of the largest winery in Washington, Ste. Michelle Wine Estates, the CEO of Visit Seattle, and a national award winning chef, Tom Douglas.

The Bounty of Washington: Tasting Train can provide another way to utilize this important corridor with broad community benefits.

Best regards,


Kathryn Cox

direct: 425.822.3925

www.marketingphilharmonic.com

composing strategy
orchestrating results

Exhibits:

Exhibit A: Summary of verbatim interviews from the community and businesses

Exhibit B: Taste Washington support letter signed by wine related professionals

Exhibit C: Report of the survey of Washington wineries

Exhibit D: Support letters from Ste. Michelle Wine Estates and Columbia Winery, the two largest wine businesses in Washington

Exhibit E: Proposed schedule.

Exhibit A:

Our team interviewed these community entities and businesses in 2010. Both of the interviewers are board members of the Puget Sound American Marketing Association, with three decades of marketing management experience each, and Masters in Business Administration degrees.

City of Snohomish
Snohomish County
Snohomish Tourism Board
Historic Downtown Snohomish
Snohomish Historical Society
Redmond Chamber of Commerce
Woodinville Wine Country
Columbia Winery
Peng Wines
Bookwalter Wines
Tildio Winery
Tulalip Resort
Seattle Convention and Visitor's Bureau
Holland America
Princess Cruises
Grayline Bus Tours
21 Acres Farm and Community Education Facility
Local food purveyors: Bill's Butcher Shop, Chez Jane, Serendipity Dips

We synthesized hours of interviews into key conclusions. We committed to the interviewees that their individual responses would not be identified, so we are unable to give attribution to each of the quotes.

As with the rest of the country, businesses and communities are looking for a shot in the arm with economic vitality and stability by increasing tourism and increasing mobility.

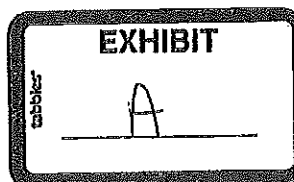
"Economic stability & growth, family wage jobs, quality of life, concerned about increasing mobility of people and freight."

"We want more foot traffic/visitors and brand awareness."

"Increase awareness and sales of local agriculture, especially wines."

direct: 425.822.3925

www.marketingphilharmonic.com



composing strategy
orchestrating results

"Economic vitality, bring more business into town."

"Generate traffic and sales for our retailers."

The businesses and communities believe in the value of rail as providing a better quality of life with more transportation choices and as a tourism magnet.

"Rail could increase tourism, especially agritourism, and economic development, efficient rail, passenger rail in a timely way."

"We desperately need public transportation. People call from downtown and want to know how to get here."

"The train could bring in people and add legitimacy to Snohomish as a destination. Enhances Snohomish's historic identity."

"Could help with expanding awareness of Centennial Trail and extend a regional trail."

"Rail is a faster quicker, cheaper to transport people. I am more of a regionalist. People don't understand boundaries."

"Rail can get more visitors to the area."

The stakeholders are looking for ways to enhance and promote their local attributes and benefits.

"We are looking for the excursion train to give comfort, quality, first class service, local flavor, menu locally grown."

"Friendly. Historic experience. Character."

"Focus on food raised here. Local experience. Puget Sound Fresh."

The stakeholders were unanimous in their overwhelming support for rail.

"A strong supported excursion opens up awareness of commuter opportunity. Perfect world would go to Everett."

"Introduce commuter rail to the region."

"Increase economic development."

"I'm behind the rail 3000%. Rail challenges the status quo."

"Very few worried about the train on the line, only 20 complaints over 3 years."

March 24, 2013

To Whom It May Concern:

Those wineries signed below would like to voice support Eastside Community Rail's (ECR) plan to run an excursion train down the Eastside rail corridor from Woodinville to Snohomish. We support the \$6.2 million of public funding to maintain and improve the publicly owned Woodinville to Snohomish portion of the Eastside Rail corridor.

The value increases with the addition of easier access to Seattle by adding platforms in South Kirkland/North Bellevue. Keeping the track intact can bring short and long term economic and public benefits. We are asking for Kirkland and King County to retain the track.

We anticipate that the "Bounty of Washington: Tasting Train" will become a valuable way to enjoy the beauty of the region, combining the pleasure of train travel with outstanding local foods and wines. This special experience will be embraced by residents of the Puget Sound region and visitors from around the world.

We are excited about the prospect of our wines possibly being showcased and poured on the "Tasting Train".

This is a unique partnership opportunity to create value for the region and our industry.

Winery Name and Sign: Reiniger - [Signature]
Winery Name and Sign: Solvang-Davis J. Doll
Winery Name and Sign: Robert Ramsey Cellars [Signature]
Winery Name and Sign: Abelisco Wines [Signature]
Winery Name and Sign: ANDREW LIND CHIEF DE CUISINE SPACENFEE
Winery Name and Sign: JOSE LUM POS Lead Spencewiedle
Winery Name and Sign: Russ Bulthuis Pos [Signature] Ne Pella
Winery Name and Sign: OKANOGAN EST. [Signature] Schneid
Winery Name and Sign: SILVER LAKE [Signature]
Winery Name and Sign: Purple Star Wines [Signature]
Winery Name and Sign: Washington Tasting Room [Signature]
Winery Name and Sign: Rainier Wine [Signature]
Winery Name and Sign: RAISEYER VINEYARDS - [Signature]
Winery Name and Sign: Palouse Winery - [Signature]
Winery Name and Sign: Pepper Bridge Winery [Signature]
Winery Name and Sign: RYAN PATRICK VINEYARDS [Signature]
Winery Name and Sign: Pat. Laurel Winery [Signature]
Winery Name and Sign: Portia [Signature]
Winery Name and Sign: Revelry Vineyards [Signature]
Winery Name and Sign: VISIT SEATTLE [Signature]
Winery Name and Sign: Windy Is Winery [Signature]

EXHIBIT

B

79.

[illegible]



EASTSIDE COMMUNITY RAIL BRIDGING THE GAP

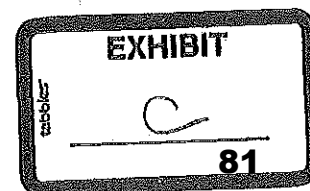
Bounty of Washington Tasting Train's Washington Winery Study

Methodology

- Emailed an online survey using the AYTm.com survey service to 433 wineries with valid email addresses
- Received 48 completed surveys which is a significant 11% response rate
- 21% of the respondents were Woodinville wineries or had Woodinville tasting rooms
- Statement used when describing the new excursion train concept: *An entity is attempting to bring back an excursion train to the Eastside. The concept is different than the former Dinner Train. The new train celebrates local Washington food and wine with rotating wines and guest chefs giving passengers a sample of the tastes of Washington. In the first stage the line runs from Woodinville to Snohomish.*

Summary of Results

- 92% want to participate with 77% wanting to participate more than 2 days a year. Participation was so overwhelmingly positive that one winery suggested we hold a lottery to choose which wineries are showcased on the train.
- 98% believe the Tasting Train will promote Washington wine. Only 59% thought the previous Dinner Train promoted Washington wine with only 14% in the top category versus 50% for the Tasting Train.
- 93% want more information and even 69% will write letters to support public funding
- 80% of Woodinville wineries believe starting in South Kirkland will help their business.
- 70% believe the Tasting Train will have more customers than the 100,000 annual customers the Dinner Train experienced.



Bounty of Washington Tasting Train's

Washington Winery Study

Methodology

Emailed an online survey using the AYT.M.com survey service to 433 wineries with valid email addresses

Received 48 completed surveys which is a significant 11% response rate

21% of the respondents were Woodinville wineries or had Woodinville tasting rooms

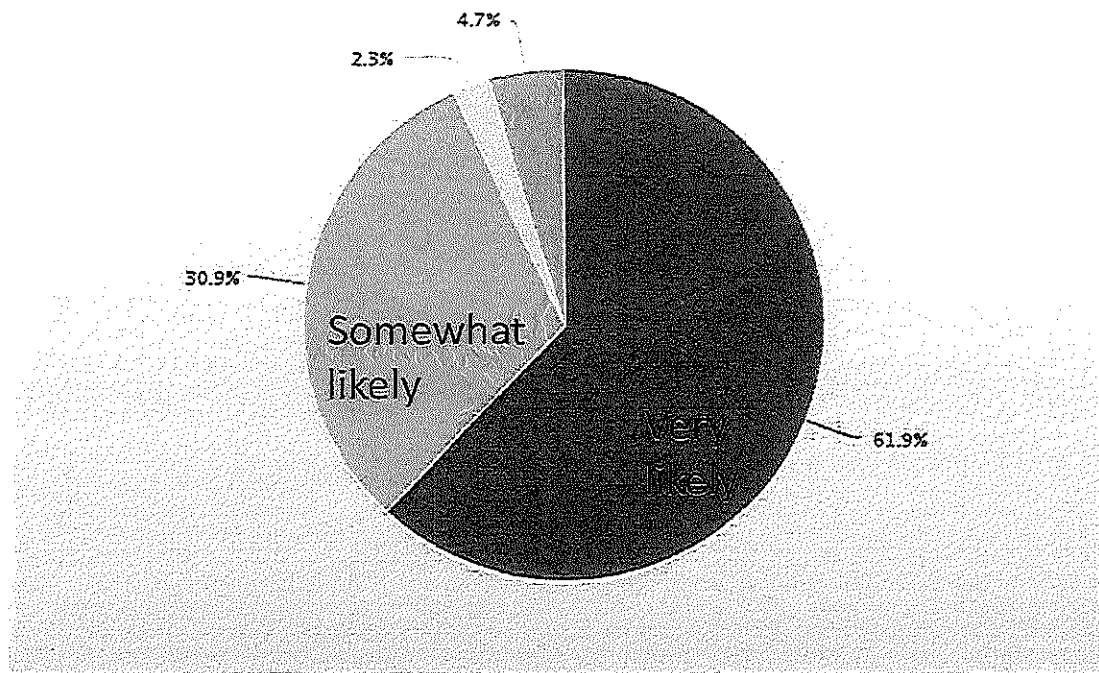
Statement used when describing the new excursion train concept: *An entity is attempting to bring back an excursion train to the Eastside. The concept is different than the former Dinner Train. The new train celebrates local Washington food and wine with rotating wines and guest chefs giving passengers a sample of the tastes of Washington. In the first stage the line runs from Woodinville to Snohomish.*

Summary

Washington wineries overwhelmingly support the Bounty of Washington Tasting Train.

- 92% want to participate with 77% wanting to participate more than 2 days a year
- 98% believe the Tasting Train will promote Washington Wine
- 93% want more information and even 69% will write letters to support public funding
- 80% of Woodinville wineries believe starting in Kirkland will help their business.
- 70% believe the Tasting Train will have more customers than the 100,000 annual customers the Dinner Train had.

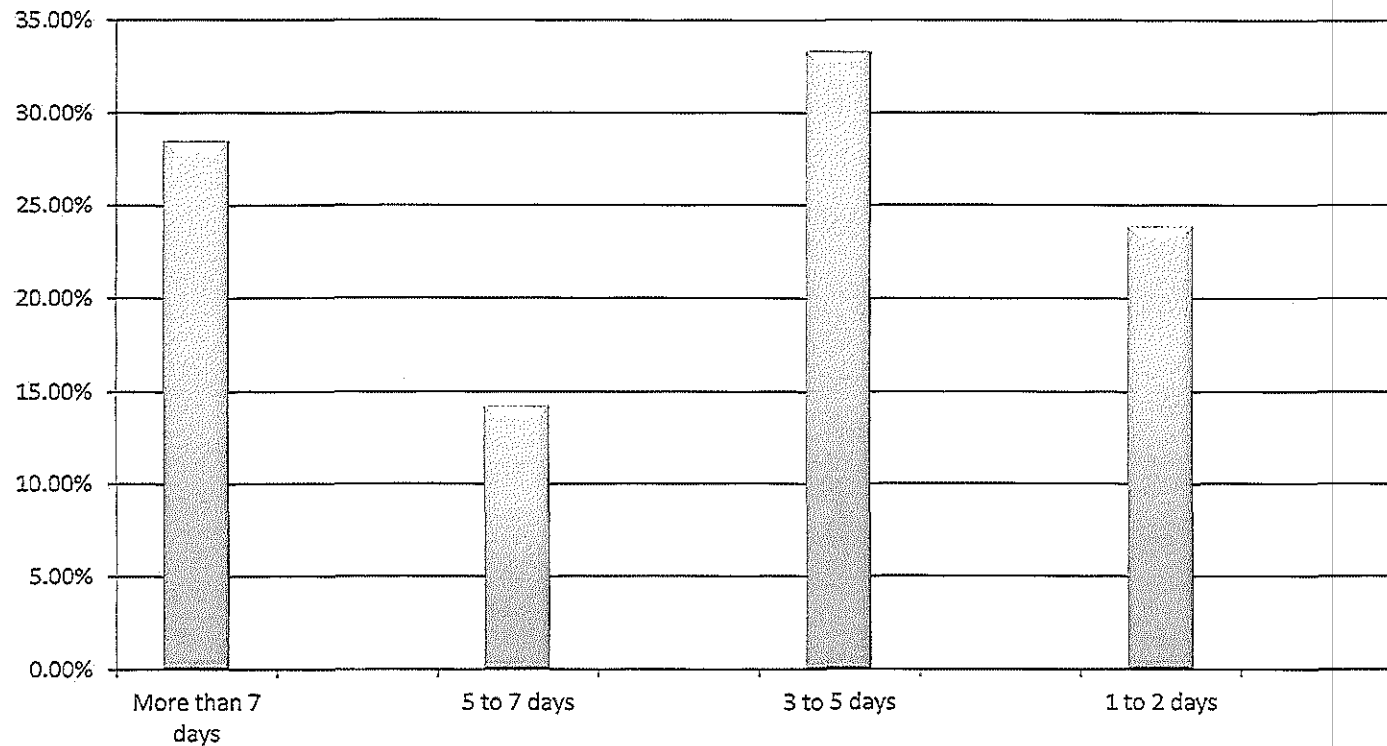
Universal participation



It was almost unanimous (92%) that wineries want to present their wine with a representative on the Tasting Train. Of the 10 Woodinville wineries it was unanimous with 80% very likely and 20% somewhat likely. One winery commented that we might need a lottery to determine which wineries get to showcase their wines.

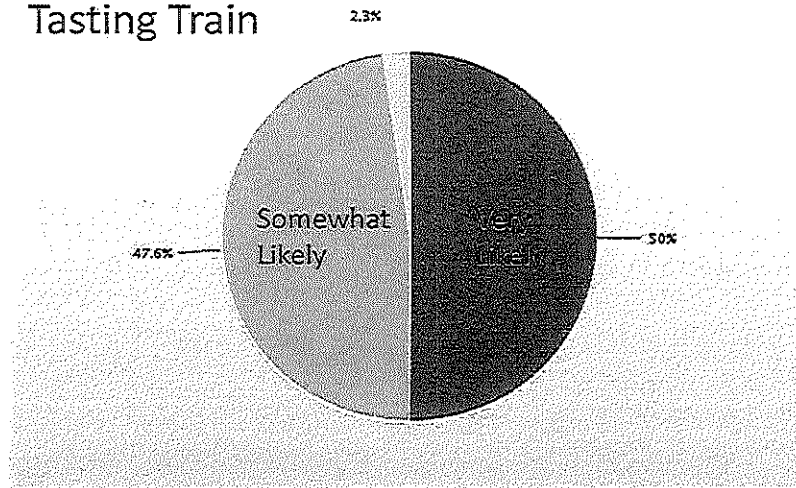
Multiple Days Participation

Number of days in Tasting Train participation



Not only were the wineries interested in participating but 77% wanted to participate more than 2 days.

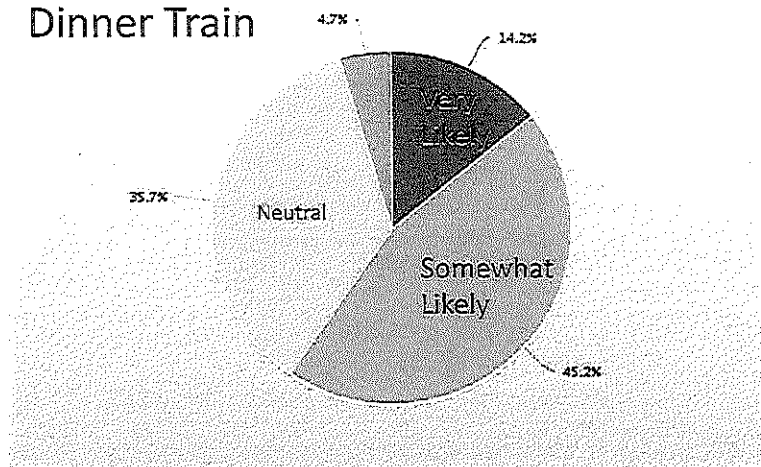
Tasting Train



Tasting Train promotes wine industry

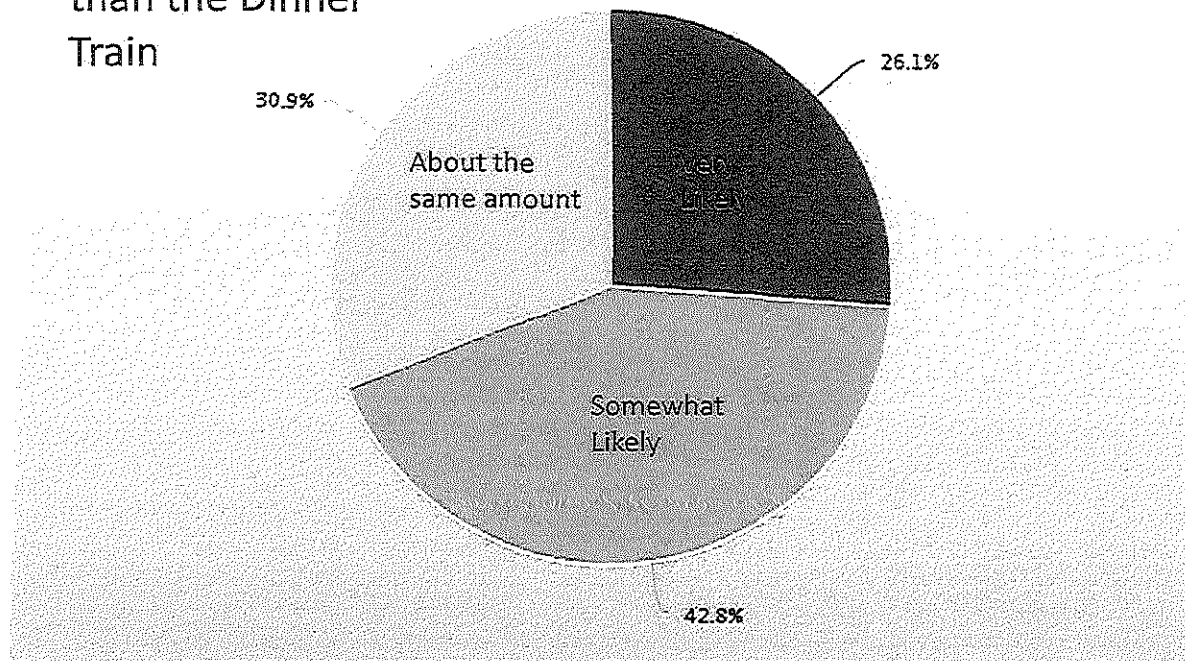
Winery respondents were almost unanimous that the Tasting Train would promote the wine industry. Only 59% thought the previous Dinner Train did with only 14% in the top category versus 50% for the Tasting Train.

Dinner Train



Tasting Train upside

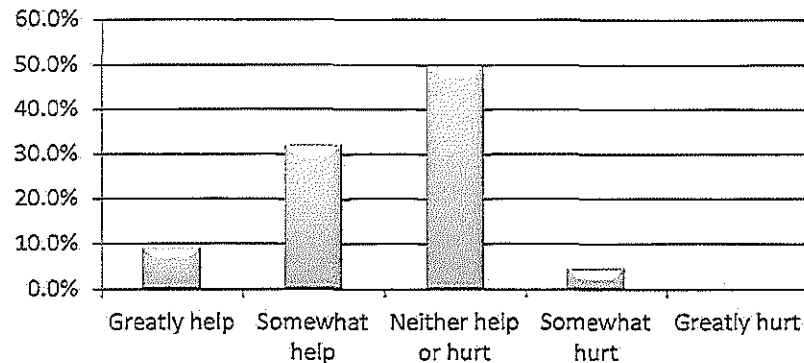
More business
than the Dinner
Train



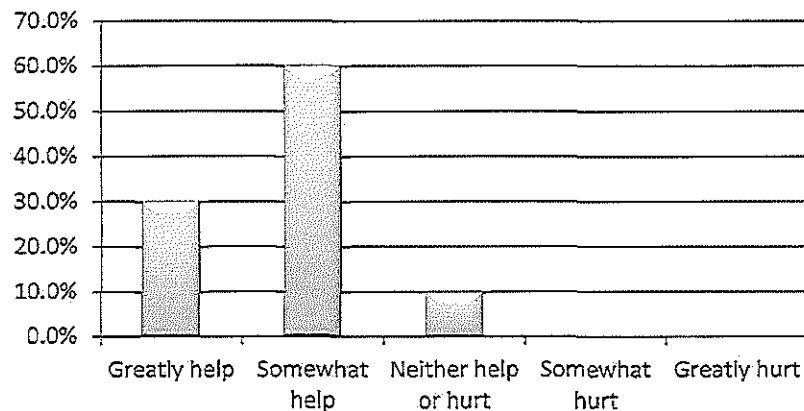
Winery respondents believe that the Tasting Train will have more business than the former Dinner Train

Starting in Kirkland

All Wineries

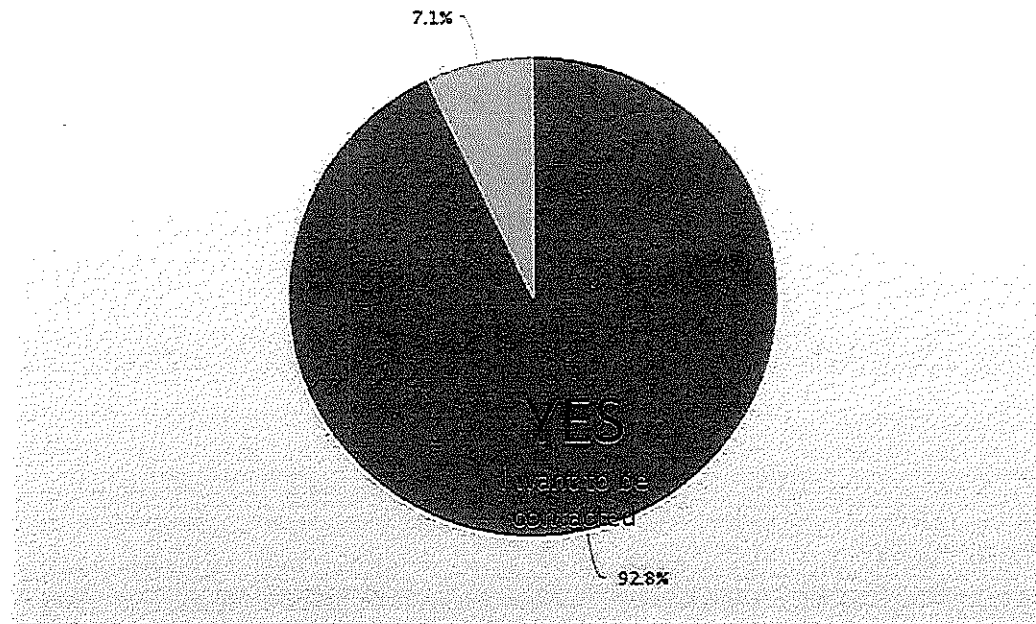


Woodinville wineries



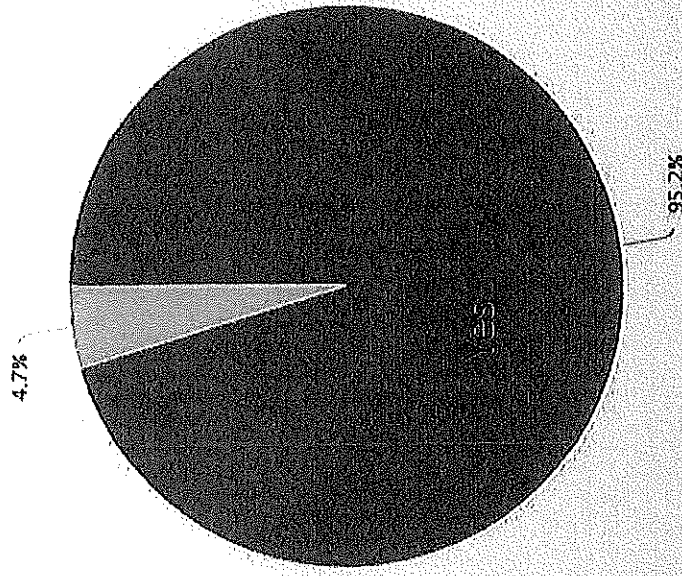
While all wineries including Woodinville wineries wanted to participate in the excursion train from Woodinville to Snohomish, there was stronger responses from wineries in Woodinville to start in Kirkland. 40% of the total thought it would help their wine business while 90% of the Woodinville wineries thought it would help.

Demonstrating Strong Interest



Winery respondents were so excited about the new excursion train that almost all wineries want more information about the Bounty of Washington Tasting Train. 69% of the wineries said they would write a support letter for public funding to rehabilitate the track.

High Familiarity with Dinner Train



Almost all wineries remember the Dinner Train



December 10, 2012

Kirkland City Council
King County Council

Sent via email

Re: S. Bellevue to Woodinville corridor – letter of support

Dear Kirkland and King County council members;

Ste. Michelle Estates would like to voice support of the Eastside Community Rail's (ECR) plan to run an excursion train down the Eastside rail corridor. The value increases with the addition of easier access to Seattle by adding platforms in North Bellevue and potentially Totem Lake.

We anticipate that the "Bounty of Washington: Tasting Train" will become a valuable way to enjoy the beauty of the region, combining the pleasure of train travel with outstanding local foods and wines. This special experience will be embraced by residents of the Puget Sound region and visitors from around the world.

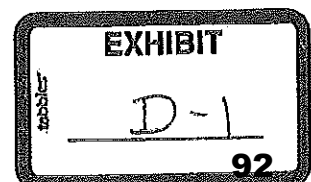
We are excited about the prospect of our wines possibly being showcased and poured on the "Tasting Train".

This is a unique partnership opportunity to create value for the region and our industry. We look forward to learning more about the plans for the "Bounty of Washington" train.

Sincerely,

Carol Munro

Carol Munro
Director of Community Relations
Ste. Michelle Wine Estates





December 10, 2012

Kirkland City Council

King County

Re: S. Bellevue to Woodinville corridor – letter of support

Dear Kirkland and King County council members;

The Columbia Winery would like to offer our support to the Eastside Community Rail's (ECR) planned to run down the Eastside rail corridor. The value increases with the addition of easier access to Seattle by adding platforms in North Bellevue and potentially Totem Lake.

We anticipate that the "Bounty of Washington: Tasting Train" will become a valuable way to enjoy the beauty of the region, the pleasure of train travel and our outstanding local foods and wines – a perfect blend! This special experience will be embraced by both the residents of the Puget Sound region and visitors from around the world.

We are interested about the prospect of showcasing and pouring our wines on the "Tasting Train".

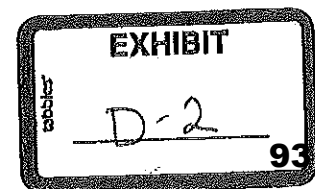
This is a unique partnership opportunity to create value for the region and our industry and we are pleased to support its success.

Sincerely,

John Sportelli

Senior Manager

Columbia Winery



Bounty of Washington: Tasting Train Proposed Schedule

Wednesday & Thursday Tulalip Special: Without winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: \$100 including bus service

Wednesday & Thursday Tulalip Special: With winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: \$120 including coach service

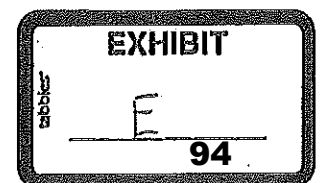
Friday Cruise Special or Mid-week Convention

1:00 p.m. Coach leaves Seattle

2:00 p.m. Arrive Woodinville, Embark in Woodinville Small Appetizers and wine tasting

3:00 p.m. Disembark Snohomish: Shopping

4:30 p.m. Embark Snohomish, Small Plates and wine tasting



5:30 p.m. Arrive Woodinville

6:30 p.m. Coach arrives in Seattle

Base Price: \$110 (with coach service)

Friday Evening Happy Hour: Late Fall to early Spring

5:00 p.m. Embark Woodinville: Appetizers and Wine tastings

6:00 p.m. Disembark Snohomish: Entertainment and shopping

7:00 p.m. Embark Snohomish: Small Plates and Wine tastings

8:00 p.m. Arrive Woodinville

Base Price: \$75

**Saturday and Sunday Afternoon (dependent on demand In Late fall to Early Spring, every weekend
Late Spring to Early Fall)**

1:00 p.m. Embark Woodinville: Snacks and beer or wine tastings

2:00 p.m. Disembark Snohomish

3:30 p.m. Embark Snohomish: A small plate and beer or wine tastings

4:40 p.m. Arrive Woodinville

Price: \$65

Extra fees for premium winemakers and other special events

Saturday evenings: Winter Late Fall to early Spring

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

9:30 p.m. Arrive Woodinville

Base Price: \$85

All evenings: Late Spring to Early Fall

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

9:30 p.m. Arrive Woodinville

Base price: \$85

COMMUNITY AND ECONOMIC GROUPS



December 7, 2012

The Honorable Conrad Lee
Bellevue City Council
PO Box 90012
Bellevue, WA 98009-9012

Dear Mayor Conrad and Councilmembers,

The Cascadia Center for Regional Development and All Aboard Washington urge the City of Bellevue to initiate a multi-stakeholder regional study of the feasibility for the temporary use of the Eastside Rail corridor to bring construction equipment and material in and out of proposed major public and private development projects in Bellevue slated for the next few years.

The severance of the Eastside Rail line at the Wilburton Tunnel as part of the WSDOT widening of I-405 and the lack of rail connection between the southern terminus of the line at Gene Coulon Park and the BNSF north south mainline in Tukwila dictates the exploration of this transportation option north from Bellevue to Woodinville and the Snohomish intersection with the BNSF Stevens Pass line. Any further track removal of the Eastside line would be held in abeyance pending the results of the study.

Funds could be secured through applications to the state freight rail assistance program or requests in the state capital budget. Freight is currently being hauled on the Snohomish to Woodinville section of the Eastside Rail corridor. In addition, Congestion Management Air Quality (CMAQ) funds through the Puget Sound Regional Council could be sought for the study. The study would be proposed in partnership with other corridor stakeholders.

Alternatively, or in concert funds from the federal Department of Energy, Environmental Protection Agency, and Federal Railroad Administration could be sought to explore the use of natural gas powered locomotives as a pilot project. Railroads are increasingly exploring natural gas as a more fuel efficient and emission reducing environmental option to traditional diesel powered locomotives. Canadian National Railway estimates that retrofitting diesel-electric locomotives with natural gas produces 30 percent less carbon dioxide and 70 percent less nitrous oxide emissions.

The former owner of the line, Burlington Northern Santa Fe Railway, is also conducting tests of natural gas powered locomotion. Westport Innovations and Caterpillar formed a partnership this year to apply Westport's high pressure direct injection (hdpi) technology on Caterpillar's Electro-Motive Diesel locomotives and should be invited to participate in the project.

The alternative is the use of hundreds of thousands of double dump trucks for major projects such as Sound Transit's East Link tunnel, Bel-Red Corridor development and expansion of Lincoln Square among others. The cumulative impacts of diesel truck emissions, traffic

congestion and wear and tear on local roads and state highways – on top of the current SR520 and I-405 projects – is daunting. The Final EIS for North Link documents hundreds of trucks per day in use in the 16 months of tunnel construction for removal of spoils and many more daily truck trips for periods of heavy concrete pouring. **We are lucky to have a rail option adjacent to the Bellevue projects and should take advantage of a greener transportation alternative consistent with the Puget Sound Regional Council and Port of Seattle policies on transportation and climate change.**

In addition to potentially reducing costs to taxpayers and consumers from the use of rail, public health is a major consideration. According to the Puget Sound Clean Air Agency, "diesel exhaust is a significant source of fine particle pollution, as well as a combination of more than 40 substances that are listed as hazardous pollutants. Because of their microscopic size, these fine particles can become trapped in the small airways of the lungs when they are inhaled...particulate matter from diesel exhaust overwhelmingly presents the highest health risk in the Puget Sound area, making up an estimated 78 percent of the potential cancer risk from exposure to outdoor air toxics. Diesel particulate matter is also linked with health effects including heart problems, aggravated asthma, chronic bronchitis and premature death."

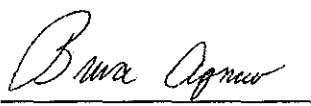
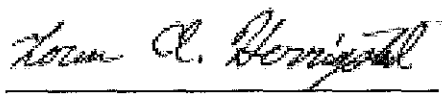
The Cascadia Center and All Aboard Washington have many other reasons (as documented in our attachments) to retain and rehabilitate the existing rail track (as a more cost effective option to tearing out and rebuilding new tracks in the future) while jointly developing an adjacent trail. The hundreds of rail *and* trail projects in the country today illustrate how one depends on the other.

These are issues that can be addressed in the regional planning process proposed by King County. Exploration of the environmental benefits of interim use of the Eastside Rail line would also require modification of the 2013 timeline for removal of rail tracks by the City of Kirkland.

The costs of a potentially temporary realignment of a local trail do not outweigh the potential benefits to the central Puget Sound region from construction savings in tax dollars, enhancements to public health, air and water quality and reductions in impacts to roadways from hundreds of thousands of double dump trucks in and out of construction sites.

We trust you agree.

Sincerely,

	
Bruce Agnew Director, Cascadia Center for Regional Development	All Aboard Washington

CC: Steve Sarkozy, Bellevue City Manager

Dennis McLerran, EPA Region 10 Administrator

Eastside Rail Now!

June 18, 2013

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW, Room 1034
Washington, DC 20423-0001

In re: STB Finance Docket No. 35731, Ballard Terminal Railroad Company, L.L.C.,
Acquisition and Exemption, Woodinville Subdivision

Ms. Brown:

Eastside Rail Now! is a nonprofit association organized by citizens in 2007 in order to safeguard critical rail infrastructure and crucial environmental values consistent with the Washington State Environmental Policy Act and implementing state regulations, with mandatory requirements for “least cost planning” pursuant to RCW 47.80.030, and with applicable state decisional law, *inter alia*, through its activities wholly conforming with 501(c)(4) status as granted under federal law.

ERN! supports rail-and-trail uses of the Renton to Snohomish rail corridor to the extent that dual usage is compatible with maintaining critical rail infrastructure and crucial environmental values.

ERN! supports Ballard Terminal Railroad’s proposals for preservation of existing rail, ties and ballast as presently in place, for upgrading such structures, and for resuming freight service over the line at issue, herein, pursuant to filings now pending before the Surface Transportation Board, as above identified, including but not limited to its motion to enjoin the City of Kirkland’s plans for removal of said essential rail facilities in willful violation of legal obligations undertaken by that city, voluntarily, to comply with the Washington State Environmental Policy Act, completely, in order thereby to receive \$1.97 million in cash from all taxpayers of the State of Washington, as a *quid pro quo* for full compliance with all SEPA requirements, by means of a formal contract legally executed with the Washington State Public Works Board (Contract No. SD12-963-139).

Given that the City of Kirkland is now, and has for an extended period of time been, operating in intentional violation of its legally indisputable contractual obligations to the State of Washington to comply with all SEPA requirements, it should not be allowed by the Board to purport contrary legal positions in any matter pending herein as above referenced, necessarily in *mala fides*, and a minimum sanction legally appropriate would appear to be a striking of all of its filings submitted to this date and a preclusion of any further filings while it is violating its lawful duties to its state.

This misconduct before the Board, herein, continues the City of Kirkland’s earlier fraud on a U.S. District Court in *Ballard Terminal Railroad v. City of Kirkland*, under Cause No. 2:2013cv00586, by withholding from Honorable Marsha J. Pechman, on May 3, 2013, its patent responsibility to perform an environmental review under SEPA – **as an explicit contractual duty negotiated by it for \$1.97 million** – in order to avoid a temporary restraining order to halt further track removal.

Therefore, bad faith by the City of Kirkland, as documented *via* its intentional misconduct, would appear to be considered by the Board, appropriately, in acting on all relief requested by Ballard Terminal Railroad, including its proposal to acquire rail assets at their approximate salvage value.

No reasonable doubt can exit regarding immense dirt-and-spoilage hauling needs during the near term along much of the rail corridor at issue, herein, as documented both by support letters from transport professionals referencing 4-million cubic yards of such materials from construction in the local area for private development projects and for regional transit, and also by the extensive documentation of immediate tunneling plans there by Sound Transit (a regional transit authority).

Nor can any reasonable doubt exist respecting the great utility of rail for hauling of heavy loads, such a dirt-and-spoilage, since Peter Kirk founded the City of Kirkland as the “Pittsburgh of the West” in the 19th century with foundational reliance on rail within the corridor at issue, herein, so as to haul coal, iron ore and related industrial materials based on that utility well known even then.

Nor can any reasonable person avoid the utter insanity of ripping out an existing rail line, and of so robbing the region of said well-known utility, as immense spoils amass on the near horizon.

Nor can the City of Kirkland’s elected officials and senior managers deny knowledge that it has explicitly committed legally – pursuant to Public Works Board Contract No. SD12-963-139 – to full compliance with the “State environmental policy, Chapter 43.21C RCW” (at its page 16), in return for \$1.97 million in state taxpayer dollars to facilitate its “Site preparation” (at its page 21); and, yet, despite the clear *quid pro quo* undertaken voluntarily to receive nearly \$2 million, it has unlawfully removed approximately 100 yards of track in that city, at its Railroad Avenue, without undertaking the required environmental review to which it has specifically obligated itself legally.

Nor can said misfeasance or such malfeasance avoid the fact that quintessential utility questions shall be at the heart of the environmental assessment to which it has squarely committed itself – in return for \$1.97 to be received from all state taxpayers – given fully patent legal obligations to analyze “the cost of and effects on public services” with therein-stated *foci* upon each deleterious effect for “utilities, roads, fire, and police protection” (WAC197-11-440[6][e]), as is documented further in submissions earlier made to said City, attached hereto and hereby incorporated herein.

Indeed, only by defrauding the Chief Judge of the U.S. District Court for the Western District of Washington, and only by following that wrongdoing with an attempt to defraud this Board now, can the City of Kirkland even attempt to avoid both the physics of haulage as dictated by gravity and by other central principles of physics and also the federal and state law that controls herein.

Respectfully submitted,

EASTSIDE RAIL NOW!

By: Will Knedlik, its president

Eastside Rail Now!

Box 99, Kirkland, Washington 98083



Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

Re: Finance Docket No. 35731: Ballard Terminal Railroad Company, LLC-Acquisition and
Operation Exemption—Woodinville Subdivision
Docket No. AB-6 (Sub-No. 465C): BNSF Railway Company—Abandonment Exemption—in
King County, Washington

Dear Ms. Brown:

I'm writing you today to express Economic Alliance Snohomish County's strong support for retaining the Eastside Rail Corridor rail and express our significant concerns over the potential loss of Eastside rail infrastructure as planned by the City of Kirkland.

The Eastside Rail Corridor represents an irreplaceable opportunity for the communities along the Corridor and the region. This unique, typically 100-foot wide strip of land can at once:

- Provide opportunities for economic development in existing industrial-zoned lands supporting our County's robust aerospace and advanced manufacturing sectors;
- Increasing opportunities for recreation in east Snohomish and King Counties;
- Serve the region's growing freight and passenger transportation needs; and,
- Foster sustainable, vibrant, and attractive communities.

We support the retention of the Eastside Rail Corridor track and thus support a moratorium on all removal of track in the entire Eastside Rail Corridor, specifically Kirkland's 5.75 mile portion. Kirkland's portion is critical to the long-term goal of providing commuter rail connecting Snohomish County to communities along the eastside of Lake Washington.

We believe the rails and trails concept provides the most public benefit and is consistent with the public's intent when purchasing the line in 2009. King County's existing easement for the rail line articulates the intent "that the property be used for regional recreational trail and other transportation purposes, including...rail." In a 2010 court deposition, then Port of Seattle Commissioner Gael Tarleton stated that "the reason for that paragraph was to make it explicit that the rail had to be preserved; that you couldn't have just a recreational trail."

Our highways and rails are important assets to protect to generate economic development and provide transportation for the public. Maintaining and upgrading publically owned transportation lifelines is always a high priority for the public. The Eastside Rail Corridor is a precious asset that has been owned by the public since 2009 and must be preserved. To this end, we also support the \$6.2 million funding for the first phase of maintaining the Eastside Rail Corridor.

Thank you for your time and consideration of this issue.

Sincerely,

Troy McClelland
President & CEO

FREIGHT SEGMENT SHIPPER **SUPPORT**

Building Materials Distribution
Transportation Department
1111 West Jefferson Street, suite 300
Boise Id 83728
Ph 208-384-6208 Fax 208-395-7449



Boise Cascade

March 25, 2013

Dear Mr. Engle:

Thank you for taking the time to discuss the East Side Rail Corridor with me. As you know Boise Cascade operates a building materials distribution facility near Maltby Junction, which currently employs 80 associates and serves approximately 150 customers in the Puget Sound and Alaska markets. Boise Cascade has been in business at this location since 1972 and depends on rail service to manage our business. Continuation of economical rail with consistent service is vital to this location. In order to best achieve that goal I believe that it is in Boise Cascade's best interest to promote multiple use traffic along the rail corridor. That traffic would and should include freight traffic, excursion trains, commuter rail and non-motorized traffic.

Currently the rail line is providing freight service from Snohomish Jct. to Woodinville. In order to maintain that service and create the necessary line density to facilitate the needed maintenance, new rail freight traffic, as well as other types of rail traffic, need to be developed. I was excited to hear the progress you have made in both potential freight growth and capital funding.

We also believe that the opportunity to maintain the East Side Rail Corridor south of Woodinville for all types of rail traffic, freight, passenger and excursion should be considered. In addition we believe that non-motorized traffic can coexist with rail traffic in this corridor. The opportunity to utilize the existing right of way to move freight and commuters would have a positive effect on the environment by potentially reducing the numbers of trucks and cars on an already over congested road system.

Sincerely,

Chuck Bromley
Transportation Mgr



September 30, 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW, Room 1034
Washington, DC 20423-0001

RE: STB Finance Docket No. 35731
Ballard Terminal Railroad Company, L.L.C.
Acquisition and Exemption, Woodinville Subdivision

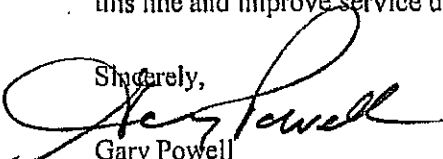
Dear Ms. Brown,

Our company, Matheus Lumber Company, Inc, is in favor of the continuation and enhancement of freight rail service in the so called "Eastside Rail Corridor" currently served by Ballard Terminal Railroad (BTR). We urge the board to preserve freight rail service along this line by granting BTR's petition to re-activate freight service between Woodinville and Bellevue.

Matheus was established in 1932 and we continue as a wholesaler of lumber and plywood products to commercial builders throughout the U.S. We predominately sell to the multi family and infrastructure markets. Our sales this year will be over two hundred million dollars and we have six offices in four states with over eighty employees. Our headquarters and main inventory yard is located just south of Woodinville on the rail line that is known as the BNSF Issaquah spur. We are interested in reactivating this line in order that we could use rail service to receive railcar loads of lumber and plywood directly to our yard. We would need a new industrial spur at our location for us to directly receive freight service. Currently we receive three to four rail cars per month at the Scafoo Corporation rail spur in Woodinville from large mills throughout the Northwest. We also use rail service to receive materials at reloads near projects we are supplying throughout the U.S. Each rail car replaces three truck shipments and represents a saving of around \$1,000 in freight costs not to mention it keeps three trucks off the highways. There is also savings in buying in railcar quantities.

A few years back when the rail line adjacent to our location was used for rail freight and the Spirit of Washington dinner train it seemed to me that it could have also been used as a shared line for trolley and a trail for general use. I personally went on the former Spirit of Washington dinner train and have fond memories of that service. We support the reactivation of the rail line between Bellevue and Woodinville as this would allow the BTR to increase their revenue and use this to continue to support customers along this line and improve service delivery. Please grant BTR's petition for reactivation of this line.

Sincerely,



Gary Powell
President

P.O. Box 2260 • 15800 Woodinville-Redmond Road NE • Woodinville, WA 98072-2260
425-489-3000 • 1-800-284-7501 • Fax: 425-822-4028 • www.matheuslumber.com



Spectrum Glass Company

05/01/2013

To whom it may Concern,

Spectrum Glass has been operating in Snohomish County for over 30 years. We are the leading manufacture of stained glass in the World, and have customer on every continent, save Antarctica. We currently have over 100 employees, 60 of which been with . Spectrum for over 10 years. We are also the leading manufacture of glass for glass blowers; we supply a number of local glass blowers, which range from production shops like Glassbaby to schools like Pilchuck Glass School and the Museum of Glass in Tacoma.

We rely on rail freight to bring in our two largest raw materials of Sand and Soda Ash. Without Sand or Soda Ash, none of our manufacturing is possible. We believe adding additional uses to the rail line are the best way to guarantee its future viability. These uses could include commuter rail, excursion trains, and non-motorized traffic. We are fully in support of an expansion of the uses for this rail line.

We also are working with Eastside Community Rail, and Ballard Terminal Railroad to investigate the viability of a transloading operation at our secondary facility in the Maltby area.

I am exciting to see the work that the Eastside Community Rail team has done, and the direction they are heading in. We fully support them in their endeavors.

Sincerely,

Kyle Barker
President
Spectrum Glass Company

EXHIBIT 2

March 21, 2014

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

REF: STB FINANCE DOCKET NO. 35731
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

Please accept this final statement from over six years of effort to maintain and grow the corridor segments between Snohomish and Bellevue, Washington. If ever there was a line to be reactivated, this is it. I urge you again to ensure that federal law prevails over local political bodies who, unlike Ballard's 30+ supporters, fail to appreciate the benefits of regional freight rail viability.

Ballard's business case is valid and well vetted by rail industry experts. I am a Certified Business Intermediary with over 30-years of financial and project experience, including 6-years with railways. The reason so many financial parties are interested in this opportunity is the real estate fundamental of location. This line cuts 26-miles through Washington's wine center, Woodinville, to Bellevue, a large population center, from the BNSF mainline, and affordable living in Snohomish County (SnoCo). Neither I, nor the reactivation supporters, deserve the vitriol that has come our way from our opposition for simply having the audacity to run a short line railroad in an economically viable region.

Nor does Ballard deserve such treatment. Byron Cole built Ballard from scratch, with no railroad management experience, when he saw a need for rail in northwest Seattle. Ballard has grown from one to three short lines over the last 17 years, putting it in a position to expand its operations upon the reactivation of the line. Byron's partner, Paul Nerdrum, operates Salmon Bay Sand and Gravel, a family business that has grown and succeeded for over 100 years. These are solid citizens of the Seattle-area business community, not worthy of the demeaning attacks from the opposition for the mere desire to expand a railroad.

Attached at the end of this letter is a diary of communications evidencing the lengths that our opponents have undertaken to chill shipper support for reactivation. In spite of what has happened up to this point, as I explained during my deposition, I intend to approach all future collaborations with Kirkland, King County, and Sound Transit with a "clean slate" so that we can install the trail that Kirkland desires and become partners who jointly work for the benefit of the community in the future.

Developments Since December

Provided a favorable Board decision, and using the land as collateral, ECRR and Ballard will acquire the fee from Bellevue to Woodinville so only SnoCo and the railway will have line control.

Both American West Bank and Coastal Community Bank support this approach. With the land secured, private equity will be used for other railway needs.

A supportive SnoCo has acquired the northern 11-miles of the operating corridor, and we are collaborating on the construction of a maintenance of way road that can be used as a trail. Further, we are discussing the expansion of railway-based businesses in Maltby to make it a regional center for transloading, manufacturing and other industrial uses, immediately off SR-522. Boise Cascade, Wolford, CT Sales, Plywood Supply and others are already there.

General Mills and RJB currently transport shipments via rail to sites elsewhere in the region and truck their goods for final delivery along the reactivation segment of this line. Both recognize the rail savings and a desire to have service directly to their facilities.

Woodinville Whiskey has come on board. Do not be fooled by our opponents' contention that a spur is not feasible. By simply installing a switch further back on the line, greater spur elevation change can readily be achieved. For every 12 inches the switch is moved back, the spur can be lowered one inch. If you need 100 inches of elevation change, move the switch back 100 feet. Gravity helps grain flow downhill from a hopper car into the warehouse. The elevation is not a negative as Kirkland asserts.

After reactivation, we intend to market to Boeing. Boeing's 737 plant is at the south end of this line and their main Everett plant near the north end. As late as 2008, BNSF moved 737 fuselages down this line. With Boeing's recent decision to build the 777X in Everett and a new composite wing for it, we expect to have serious discussion with them.

Ballard's Plans Will Not Interfere with Sound Transit's

Sound Transit has immediate plans to use only a small section of the corridor to begin transit operations in 2023 – a decade away. This overlap is the tail-end track for occasional freight switching movements. Additionally, their track is elevated as shown in the diagram submitted in December. If Sound Transit gets approval to go north out of Bellevue, they must first get voter funding and are at least two years out from seeking that. Then it will take another 15-years before transit operations would actually begin. A public-private partnership could have this same service in 5-10 years and a small fraction of the cost. King Co. and Kirkland have no plans and no money for the trail development they want. As a matter of fact, King Co. has not even paid the Port for their portion of the corridor.

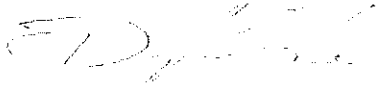
The most analogous rail corridor to the ERC is S.M.A.R.T., Sonoma Marin Area Rail Transit, which built over 40-miles of rail and trail for \$9M/mile versus nearly \$200M for Sound Transit. A public-private partnership would be very near SMART's costs. I have visited this line twice and attended three of their presentations in the Seattle area. SnoCo supports this approach.

Conclusion

This important line impacts nearly one million citizens in the region. Thank you for your sincere and thoughtful consideration of this matter.

Ms. Cynthia T. Brown
Page 3

Very truly yours,

A handwritten signature in dark ink, appearing to read "Douglas Engle", written over a horizontal line.

Douglas Engle
Manager
Eastside Community Rail, LLC

PUBLIC ENTITY EFFORTS TO CHILL REACTIVATION SUPPORT

Aggregates West – City of Kirkland staff counsel

I received an urgent and distressed call from Scott Day at Aggregates West the morning of February 24th. He stated that he had been kicked of the Google project in Kirkland because of his involvement in this reactivation effort. Upon further investigation, he discovered that the City of Kirkland's attorney had written communiqué with the general contractor, SRM, in an attempt to have Aggregates West removed from the project.

Word of this rapidly got around construction circles, including RJB Wholesale in Kirkland. Scott told a friend of the railway that he was scared, felt that his livelihood was threatened and would take any further actions in this matter.

According to the SRM website, 173,000 cubic yards of spoils were removed by truck, although the rail runs along one side of this project and could have been used. Aggregates West could have provided materials via rail as well. This is only one example of the opportunity cost caused by this lengthy legal process.

RJB Wholesale – Kirkland's outside counsel

The city's outside legal counsel, Stoel Rives, intimidated another potential shipper, RJB, into providing a verified statement to avoid an all day deposition. According to Nick Beck of RJB, Mr. Ferguson came and visited with him and returned with a verified statement filled with legalese for Mr. Beck to sign.

Ernie Wilson found out about this, and I was able to meet with Nick the evening of February 11th, 2014. Mr. Beck wanted to clarify his position with a second simple verified statement, concluding: **"RJB will benefit from direct rail service, and I would like to have it as soon as possible."**

Kemper Development – King County

I was in active conversations the fall of 2012 and early 2013 regarding the use of rail in large construction projects with Bruce Nurse and Jim Hill of Kemper Development, the largest Bellevue developer. Bruce Nurse attended the first Eastside TRailway Alliance meeting at Ste Michelle in February 2013. Jane Hague, a King Co counsel-person was also there along with a Kirkland senior representative.

Shortly after this, all communiqué with Kemper Development went unanswered. We found out from an internal source that Jane Hague had visited with our contacts immediately before hand. Please recall that Ms. Hague publically stated multiple times "freight is a non-starter."

EXHIBIT 3

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731)
Ballard Terminal)
RAILROAD COMPANY, L.L.C.)
-ACQUISITION AND EXEMPTION-)
WOODINVILLE SUBDIVISION)
STB DOCKET NO. AB-6 (SUB. NO. 465X))
BNSF RAILWAY COMPANY)
-ABANDONMENT EXEMPTION-)
IN KING COUNTY, WA)

DEPOSITION UPON ORAL EXAMINATION

OF

PAUL NERDRUM

** Confidential Sections Enclosed **

Taken at 600 University Street, Suite 3600
Seattle, Washington

DATE: Wednesday, February 12, 2014

REPORTED BY: Katie J. Nelson, RPR, CCR
CCR NO.: 2971

Page 25

1 Q. What portion?

2 A. When you said they're marginal. When we started

3 the Ballard Terminal in Ballard, which was our first short

4 line, we had two initial shippers on the line, which added

5 more car volume. And those shippers were frozen fish

6 product coming down from Alaska being trans-loaded to rail,

7 and incoming furniture to a furniture sales company that

8 was located in Ballard. And as they've gone away, it's

9 become less viable.

10 Q. Down to 114 cars?

11 A. Correct.

12 Q. And is Mr. Cole's characterization accurate that

13 the operation of Ballard Terminal Railroad today in Ballard

14 is mostly intended to protect Salmon Bay Sand & Gravel from

15 bicycle traffic?

16 MR. PASCHALIS: You said Cole but are

17 referencing Mr. Engle?

18 MR. COHEN: I'm sorry, I guess I am

19 referencing Mr. Engle, thank you.

20 THE WITNESS: No, I wouldn't agree that that

21 is its sole existence. We rely heavily on the product we

22 bring in by rail.

23 Q. (By Mr. Cohen) Would you agree with Mr. Engle

24 that he's developed a positive working relationship with

25 you?

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1 A. Yes.

2 Q. Other than the meeting yesterday, when is the

3 last time you saw Mr. Engle?

4 A. I'm not sure when the last time I saw him was,

5 maybe after the first of the year, but I talked to him over

6 the phone once prior, excuse me, between then and our

7 meeting last night.

8 Q. About what?

9 A. That I think it was a day or two after I was

10 served with papers from your firm.

11 Q. I see. Okay. So back to Exhibit 121.

12 A. Okay.

13 Q. Look at the first page. You have a series of

14 representations there in the fourth paragraph about Salmon

15 Bay Sand & Gravel. You see that?

16 A. I do.

17 Q. Then the last paragraph on the page begins,

18 "BTRC, LLC is a viable business as well."

19 Do you see that?

20 A. I do.

21 Q. What did you mean by that statement?

22 A. Well, since our inception starting with no

23 railroad experience, no equipment, no railroad knowledge,

24 we have grown from one short line railroad operation to

25 three short line railroad operations. And we own three

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1 locomotives and we're moving a lot more freight. We have

2 grown the asset base of the business over the 15 or 16

3 years that we've been in business -- in business.

4 Q. But you're still not making any money?

5 MR. PASCHALIS: I'll object to form.

6 Q. (By Mr. Cohen) If you'll look at --

7 A. Yes.

8 Q. Go ahead.

9 A. Was that a question?

10 MR. PASCHALIS: I don't think it was. Did

11 you intend it to be a question?

12 Q. (By Mr. Cohen) I think what I want is to know if

13 you concur that the business didn't make any money last

14 year.

15 A. I -- we didn't take any money out of the

16 business, but its assets continue to grow, so the value of

17 your business continues to grow.

18 Q. What assets did Ballard add last year?

19 A. I don't know if we finished the build out of

20 800 feet of additional track in our Meeker Southern line in

21 2012 or 2013. But that would have been an asset that we

22 grew, changed our rail crossing and added some additional

23 trackage for customer unload.

24 Q. Okay. If you look at Page 2 of your June 15,

25 2013, letter, Exhibit 121, you state, "We expect no

Page 28

1 difficulties in funding the necessary track rehabilitation

2 for freight operations on the 12-mile Woodinville to

3 Bellevue segment of the Eastside corridor."

4 You see that statement?

5 A. I do.

6 Q. Have you estimated the cost of the necessary

7 track rehabilitation for freight operations on that

8 corridor?

9 A. I have not.

10 Q. So what's the foundation for that statement?

11 A. Based on Byron's review of the 12 miles of track

12 that was there. And what his thoughts were towards very

13 minimal restoration or rejuvenation costs.

14 Q. When you made this statement in June, you used

15 the word "funding." Did you use that word to mean funding

16 from the revenues or the assets of Salmon Bay Sand & Gravel

17 or what did you mean by "funding"?

18 A. Which paragraph?

19 Q. First paragraph, Page 2, "We expect no

20 difficulties in funding."

21 A. I would say a combination of the two. We would

22 first go out and look, as we had in the past, for

23 rehabilitation funds, which are made available through the

24 state of Washington for qualified short line operators

25 and/or municipalities or others. And they can come either

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1 in the form of loans that are usually low interest loans or
2 grants.
3 We haven't had any difficulty assessing the
4 funding for prior rehabilitative efforts, so we would go
5 out and look and see what the market had out there. And if
6 we were short, then we could see where else we could find
7 those funds.
8 Q. But at the time you signed this letter, you
9 didn't know what the cost of rehabilitating the line would
10 be?
11 A. Well, at the time, it was all in nearly an
12 excepted condition, which is just an FRA determination of
13 what level of quality the track is in. And for freight
14 rail purposes, excepted is adequate for us to be able to
15 deliver freight rail product with. And Byron's assessment
16 of it was going to require very little funding for the
17 rejuvenation of the line.
18 Q. Did he tell you how much?
19 A. I don't recall.
20 Q. You signed this statement without having a dollar
21 value in mind?
22 A. I probably did. I had developed a lot of faith
23 in his assessments over 15 years of him having managed the
24 Ballard Terminal Railroad operations.
25 Q. Okay. Let me try another statement on you.

Page 30

1 Mr. Nerdrum, have you ever seen Exhibit 62
2 before?
3 A. Yes.
4 Q. So this is the statement that your lawyers filed
5 with the Surface Transportation Board on December 6th. I'd
6 like you to turn to Page 4 of that statement.
7 The paragraph that starts, "Ballard is a bona
8 fide petitioner."
9 A. Correct.
10 Q. You'll see most of the way through that paragraph
11 a statement that I'm quoting, "Mr. Nerdrum, has thrown his
12 full financial support behind Ballard and this project, as
13 detailed in the letter which he previously submitted in
14 this proceeding and which is again, also again attached
15 hereto."
16 Is that an accurate statement?
17 A. I think my words were probably, Salmon Bay will
18 do whatever we can to support Ballard in their efforts to
19 rehabilitate these records and return it back to use.
20 Q. Whatever you can?
21 A. Yes.
22 Q. Is that the same as your full financial support?
23 A. I wouldn't interpret it that way, no.
24 Q. Take a look at 112. If you look at Page 2 of
25 Exhibit 112.

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1 A. Okay. Oops. I go Page 1 and then it goes to
2 Page 4.
3 Q. Well, it's Page 4 I want you to look at it. It's
4 actually Page 2 of the exhibit but it's part of a larger
5 filing.
6 So this is Mr. Cole speaking. And I'd like you
7 to look at the last line on that page. Referring to you,
8 "As he wrote in his letter, he expects to be able to
9 finance the reactivation of the additional 12 miles being
10 sought in this action."
11 Is that an accurate statement of your position?
12 A. Not in whole. To help finance would be accurate.
13 But not in whole.
14 Q. So what kind of help financing the reactivation
15 are you prepared to offer?
16 A. I'd have to see what it's going to take when we
17 get there. I don't have a hard answer for that yet.
18 Q. No commitment beyond help?
19 A. Well, that's a commitment, beyond that, I don't
20 know.
21 Q. You can't quantify it?
22 A. Correct.
23 Q. Okay. Back to your letter on Page 2, first full
24 paragraph, the one that says, "We expect no difficulties in
25 funding the necessary track rehabilitation."

Page 32

1 A. Correct.
2 Q. Did you have a dollar value in mind when you made
3 that statement?
4 MR. PASCHALIS: Objection; asked and
5 answered.
6 THE WITNESS: I did not have.
7 (Exhibit Number 123 marked.)
8 Q. (By Mr. Cohen) Mr. Nerdrum --
9 MR. PASCHALIS: Let me stop right now since
10 this is an August 20th letter, I will go back to the
11 question regarding the conference that we had. What is
12 the, you know, relation that you intend to ask about?
13 MR. COHEN: I'm really wanting to ask him
14 whether a statement made in that letter represents his
15 position today.
16 Q. (By Mr. Cohen) And that is your signature at the
17 end of the Exhibit 123?
18 A. Correct.
19 Q. On Page 3 of that letter, middle paragraph, the
20 one that starts, If the rails come out?
21 A. Correct.
22 Q. Would you read that statement?
23 A. "If the rails come out, there is only a very slim
24 chance of them being restored. This is a very real harm,
25 especially when a short segment in the middle of a long

Page 33

1 corridor is removed."
 2 Q. Thank you. So this was written before the rails
 3 came out?
 4 A. I believe so.
 5 Q. Did Kirkland's removal of the rails change your
 6 view that you expect no difficulties in financing the
 7 reactivation of the rail service?
 8 A. They would have changed my view.
 9 Q. And what would that view be today?
 10 A. That the replacement of the removed segment,
 11 which I think took place sometime around the first part of
 12 September, was going to add substantial additional cost,
 13 probably upwards of \$5 million to replace the track and
 14 rail that were in there based on roughly a million dollar a
 15 mile cost value.
 16 Q. So Mr. Cole this morning testified 2 million a
 17 mile. Do you have any reason to disagree with that?
 18 MR. PASCHALIS: Well, let me object. I
 19 don't think it's proper to ask one witness to comment on
 20 another's testimony. So he can testify to what his
 21 understanding is.
 22 MR. COHEN: So noted.
 23 Q. (By Mr. Cohen) Do you have any reason to
 24 disagree with a characterization of \$2 million a mile?
 25 MR. PASCHALIS: Same objection.

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1 THE WITNESS: Okay. Can I answer?
 2 MR. PASCHALIS: Sure.
 3 THE WITNESS: If rebuilding to just an FRA
 4 excepted level, which means 15 miles an hour, and it's
 5 freight rail service and whatnot, in some of the short line
 6 magazines, a million dollar mile cost is not an unusual
 7 number to see thrown out there when people are looking at
 8 returning freight rail service. If it's going to be a much
 9 higher level of service, getting up to class 1 or 60-mile
 10 an hour or something, then I think your cost
 11 characterization is going to be \$2 million a mile or
 12 higher.
 13 Q. (By Mr. Cohen) And you're talking about laying
 14 track from scratch, right?
 15 A. Correct. But within that venue, 15-mile an hour
 16 excepted track for freight rail service is a far different
 17 standard than you'd have for, say, 60-mile an hour and
 18 passenger trains.
 19 Q. How about excursion service?
 20 A. You know, I don't know what the requirements for
 21 excursion service would be.
 22 Q. So in a verified statement that Mr. Cole signed
 23 in support of Ballard's petition for reactivation of rail
 24 service, he estimated the cost of reconstructing the track
 25 in Kirkland at \$10 million.

Page 35

1 A. Which would be close to that \$2 million a mile
 2 number.
 3 Q. Yes. And do you have any reason to disagree with
 4 Mr. Cole's assessment?
 5 A. I don't have.
 6 Q. So are you personally prepared to underwrite the
 7 reconstruction of the track in Kirkland?
 8 MR. PASCHALIS: I'll object to the form.
 9 THE WITNESS: We would be willing to
 10 participate with providing financing or collateral for
 11 financing to some extent that we would be involved in a
 12 partnership with Eastside Community Rail or others.
 13 Q. (By Mr. Cohen) Do you know if anyone else is
 14 committed to participate?
 15 A. Not based on any firsthand knowledge, no.
 16 Q. Has anyone told you that any other investor is
 17 committed to participate?
 18 A. Doug Engle has indicated that he's had discussion
 19 with a company called EB5. And I don't recall the other
 20 names, but other people that are short line operators,
 21 WATCO is one that he mentioned.
 22 Q. Did Doug tell you what EB5's commitment would be?
 23 A. He did not.
 24 Q. Or WATCO's?
 25 A. No.

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1 Q. Anyone else?
 2 A. Not that I can think of.
 3 Q. You used the term "we" a minute ago, does "we"
 4 mean you and Salmon Bay Sand & Gravel?
 5 A. In which context did I use the word "we"?
 6 Q. Yeah, it's three questions ago, I asked whether
 7 you were personally prepared to underwrite the
 8 reconstruction of the track in Kirkland and your response
 9 was, We are prepared to help or to participate -- what did
 10 you mean by "we"?
 11 A. "We" would have been either myself personally or
 12 Salmon Bay.
 13 Q. Because you control the assets of Salmon Bay?
 14 A. Correct.
 15 Q. So you have no knowledge that WATCO has committed
 16 to participate in the reconstruction of the Kirkland
 17 segment at this point?
 18 A. No firsthand knowledge, no.
 19 Q. Any knowledge at all?
 20 A. No.
 21 Q. Okay. And other than I believe Mr. Cole
 22 described a \$50,000 loan to underwrite the purchase of a
 23 locomotive, but other than that, has Ballard Terminal
 24 Railroad ever applied for any loans for the line, the --
 25 A. Going back to our definition?

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1 Q. (By Mr. Paschalis) Are you aware of any plans
2 for Ballard Terminal Railroad Company and Eastside
3 Community Rail to cease doing business together on the
4 freight segment after April of 2014?
5 A. No.
6 Q. Is it your expectation that relationship will
7 continue beyond April 2014?
8 A. Yes, I would have an expectation for it to
9 continue, and James Forgette, our current operations
10 person, would be the person I would have selected for
11 Byron's replacement.
12 Q. And is that if Byron retires?
13 A. If he were to retire, yes.
14 Q. And if Byron were not to retire, then Byron would
15 remain in that position per your understanding?
16 A. Yes.
17 Q. Can you explain to me how you first came to be
18 partnered with Mr. Cole and start the railroad operations
19 that you now have?
20 A. I came to know Byron when he worked for a company
21 that was called Seaport or Seaborne Lumber Company. And he
22 was an engineer there. I knew that he had a keen interest
23 in their rail activity, because he coordinated their rail
24 activity. And at a point in time when Burlington Northern
25 opted to stop supplying service to the Ballard area, they

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1 actually tore out a section of track before they had gone
2 through, I think it's called an abandonment filing, and
3 they had to put the section of track back in until they had
4 gone procedurally through the requirements in the STB.
5 And in that period of time, I knew that Byron was
6 somebody who had been actively involved with rail shipping,
7 basically products in and out of the Ballard area and then
8 in West Seattle out of there -- it was off Duwamish, site
9 where they had a mill.
10 I contacted him and then we ended up talking with
11 an attorney that I think he was with Betts Patterson Mines
12 at that time, and he had been a former STB person, to find
13 out what we could do to retain the rail and the rail
14 service. That kind of started the relationship between
15 Salmon Bay and Byron. And from that, the offshoot was with
16 the Ballard Terminal Railroad Company.
17 Q. Had Byron ever run a railroad prior to this point
18 in time?
19 A. Not to my knowledge. He was a very keen and
20 active rail enthusiast and knew more about rails than I
21 ever knew. But he had pretty extensive involvement with
22 rail shipping procedures for forest products they brought
23 in raw logs and cans and sawed up fish and lumber, and did
24 it for both export and domestic conception, so he was
25 active with railroads that they shipped on or shipped from.

Page 55

1 A lot of the product came out of both Oregon and Washington
2 by rail.
3 Q. And you, I believe, testified that you had no
4 railroad industry experience?
5 A. The extent of my railroad experience at that time
6 was calling a switch master at Balmer yard and asking,
7 Where's our car.
8 It should have been here a week ago.
9 Oh, yeah, well, we haven't got that switched over
10 yet.
11 Yeah, I noticed. That's why I'm calling.
12 So I really didn't have any active or practical
13 rail experience.
14 Q. You'd never been involved in running a railroad?
15 A. No, I had not.
16 Q. What was the -- in any event, you decided to go
17 into business with Mr. Cole?
18 A. Correct.
19 Q. And what was the first line that you two started?
20 A. It was the Ballard short line, the 3-mile,
21 roughly 3-mile short line in Ballard.
22 Q. And now that operation has grown to three lines?
23 A. Correct.
24 Q. What is your understanding of the impact that a
25 successful reactivation ruling by the board would have on

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1 Ballard's operations?
2 A. Provided we maintain our agreement with Eastside
3 Community Rail, we would have the abilities to grow the
4 freight rail revenue, because I think there's some unserved
5 customers there and some opportunities for us to grow the
6 volume on that line.
7 MR. COHEN: Mr. Paschalis, I'm enjoying the
8 history and prospects for the Ballard Terminal Railroad,
9 but your examination of your client is far beyond the scope
10 of anything that we asked and I'm concerned about the court
11 reporter who needs to get out of here tonight. So if you
12 could limit your inquiry to questions about subject areas
13 that we covered in the deposition, I'd be grateful.
14 MR. PASCHALIS: Let's proceed.
15 Q. (By Mr. Paschalis) You were shown Exhibit
16 Number 96 previously. And you were asked about some
17 railcar count projections listed therein.
18 A. Yes.
19 Q. Do you recall that conversation?
20 A. Yes.
21 Q. What's your understanding as to who compiles the
22 railcar count projections?
23 A. I think Doug and Byron compile the projections.
24 Q. And you'd rely on their -- would you rely on
25 their expertise in that department?

CONFIDENTIAL EXHIBIT 4

CONFIDENTIAL EXHIBIT 5

EXHIBIT 6

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731)
 BALLARD TERMINAL)
 RAILROAD COMPANY, L.L.C.)
-ACQUISITION AND EXEMPTION-)
 WOODINVILLE SUBDIVISION)
)
STB DOCKET NO. AB-6 (SUB. NO. 465X))
 BNSF RAILWAY COMPANY)
-ABANDONMENT EXEMPTION-)
 IN KING COUNTY, WA)
)

Deposition Upon Oral Examination

of

NATHAN ENGMAN

Taken at 600 University, Suite 3600
Seattle, Washington

DATE: February 6, 2014

REPORTED BY: Wade J. Johnson, RPR
 CCR No.: 2574

Page 23

1 Q. What I was attempting to communicate by asking if
2 you ever do equity investments is an investment other than
3 making a loan, so actually investing in owning a percentage
4 or some share in an enterprise.
5 A. As far as my understanding of that is, at this time
6 we do not.
7 Q. All I am trying to do is figure out here what type
8 of financing the bank would be able to provide to Ballard
9 with these questions.
10 A. In my wheelhouse --
11 Q. The railroad.
12 A. Yes. In my wheelhouse, it is only the lending
13 side. I cannot say what the rest of the bank can do. We do
14 have an investment arm within the bank, but that is not
15 something I am licensed to even talk about, so I can't -- I
16 mean, I don't believe so, but I honestly don't have a
17 100 percent answer because I have never been introduced to
18 anyone on that team.
19 Q. Great, thanks. Do you have an MBA?
20 A. No.
21 Q. Undergraduate in finance, or what was your degree
22 in?
23 A. My degree was in politics at Whitman College.
24 Q. Nice. My colleague down the hall went to Whitman.
25 A. I probably know him.

Page 24

1 Q. Were you on the swim team?
2 A. Dear lord, I was.
3 Q. So you must no Aric Jarrett then?
4 A. I think I know the name.
5 Q. Well, when we get a break or when this is all done,
6 we can maybe pop by and see him.
7 A. That would be very fun.
8 Q. The reason I ask about your background is because
9 you made reference to the type of screening that the bank
10 would do when a loan application or a proposal is submitted?
11 A. Yes.
12 Q. If I recall you correctly, you said that someone
13 will look at a business plan; is that right?
14 A. Yes.
15 Q. Do you have that responsibility, or is it someone
16 else within the bank who would review a business plan?
17 A. It's going to start off with a loan originator.
18 Q. And that would be you?
19 A. And that would be me. At that point in time, I am
20 going to determine whether I want to push this to the next
21 level, and I won't know what that looks like until I see the
22 request. Now, I have many customers. Some customers are
23 able to bankroll 100 percent of the operation, and they need
24 a small line of credit or letter of credit, and that way I
25 step in, and I do the financing package for those customers.

Page 25

1 Q. Okay.
2 A. At the time that I look at the scope and the plan
3 and the loan size that's needed, it's typically -- well, I
4 shouldn't say it's typically me. For loan requests that come
5 to me, I will make the determination if it is me that will
6 continue to handle it or if I will bring in a partner.
7 Q. What are some factors that make you decide whether
8 to continue it yourself or bring in a partner?
9 A. Two -- three primary factors. No. 1, if it's
10 nonprofit. I'm not going to say I've never done a nonprofit
11 loan, but they are discouraged for me to do, unless they are
12 already on the books and I'm doing a renewal. The other
13 type, again, is not the -- we're not supposed to originate,
14 but we can renew, and that is a maritime type loan, which is
15 using agriculture as collateral. Agricultural and maritime
16 would be quota, crab quota, salmon quota. Are you guys
17 familiar with quota?
18 Q. I have an idea of what you're talking about.
19 A. I'm not very familiar with quota, and that's why
20 I'm not allowed to do loans that have agriculture as
21 collateral. I understand what they are, but I don't
22 understand all the minutia about quotas. So whether it be
23 the crab quota, the salmon quota, or the grapes over in
24 Eastern Washington, we're not -- even if it's a \$10,000 loan,
25 since we don't understand the complexity of the agriculture

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1 business, we're not allowed to do those. Third component is
2 if the request is over 350,000, would be another mark for me
3 to get another partner involved. At that level it depends on
4 the loan size. If the loan is less than a million, I'm going
5 to refer it to one of two people within the bank; if the loan
6 is over a million, I'm going to refer it to a different
7 division. I will probably bring in one of the senior
8 representatives if it's over a million because typically
9 those will have a greater complexity, and I will want to know
10 who has the capacity to take on a large loan.
11 Q. Do you have any personal experience doing business
12 plans for railroad operations?
13 A. Personal experience, no.
14 Q. Do you have any other type of experience?
15 A. Oh, goodness. Sorry, did you want to say
16 something? No?
17 MR. PASCHALIS: No, go ahead.
18 THE WITNESS: Sorry, I thought I heard a voice
19 there.
20 MR. PASCHALIS: Let me interpose an objection
21 to the form. You can go ahead.
22 THE WITNESS: Okay.
23 Q. Go ahead. There is some problem with the way I
24 asked the question, but, if you don't understand it, tell me;
25 if not, you can go ahead and answer.

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1 I'm not violating any privacy laws.
 2 Q. Okay. Let's actually do that. There is a
 3 protective order in place here, and this can be treated as
 4 confidential information. Let me ask you this: The existing
 5 loan that Ballard has, is that information that you consulted
 6 and relied upon in drafting the letter to Cynthia Brown?
 7 A. The balance or the information within the loan?
 8 Q. When you say the information within the loan, what
 9 are you referring to? You don't have to give me amounts,
 10 just categories.
 11 A. I understand. So I guess I would answer that by
 12 saying no, the balance was not a factor; however, I did rely
 13 on payment history, collateral, and strength of the
 14 guarantors.
 15 Q. Okay.
 16 A. Based upon the information that I had.
 17 Q. Was the loan amount something that you relied upon?
 18 A. Only in such that I was the loan officer, and
 19 therefore it fit my portfolio, and until such time that there
 20 was a loan on the table that was over 350,000, it was my --
 21 how do I say it? -- it was my responsibility to handle the
 22 relationship. If they had an existing balance of 500,000, as
 23 an example, it would not have been in my wheelhouse, and
 24 therefore it wouldn't have been my loan, and therefore I
 25 would have referred him to his loan officer.

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1 Q. Okay. So, if I understand you correctly, from what
 2 you are telling me, the balance is under the threshold amount
 3 of \$350,000 because that is the extent to which your
 4 portfolio covers?
 5 A. I need to ask Craig that question, but, again, I
 6 have no problem answering that if Craig says yes. And, if
 7 it's okay with you, I'm going to make a list of questions
 8 that you want me to ask Craig, and we can ask him all at
 9 once.
 10 Q. I agree. That will be the most efficient way to do
 11 it. So let's go ahead and jot those down. I am curious to
 12 know what the total original loan amount is and what the
 13 remaining balance is. And does Ballard have only one loan
 14 with the bank, or does it have multiple?
 15 A. Again, I got to ask that question, but I'll write
 16 it down. One thing I think I can answer right now for you,
 17 just so we're all on the same page is -- let me just
 18 double-check to make sure I'm accurate about this. I do not
 19 have an original balance. We can get that, but I don't have
 20 it with me.
 21 Q. So is it accurate then to say that you either
 22 actively or at least have had responsibility for a loan that
 23 Ballard has with AmericanWest, previously Viking, since
 24 October of 2011?
 25 A. To the best of my recollection, yes.

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1 Q. When you joined the bank, was Ballard part of your
 2 portfolio that you took over?
 3 A. No. Ballard came to my portfolio in May of 2012 to
 4 the best of my recollection. And the reason I know that or
 5 reason that was the case or I believe the deadline is because
 6 we switched over from Viking systems over to AmericanWest
 7 Bank systems in May of 2012. So that is when they
 8 transferred data and transferred loan officers and
 9 transferred whatever. It could have been June or July, but
 10 it was all right around the summer of 2012.
 11 Q. Okay. You said that you have had experience
 12 reviewing Ballard's business plans?
 13 A. I have looked at their file, so I couldn't tell you
 14 what I looked at at this time, but I have looked at their
 15 file, and I've looked at their online profile.
 16 Q. Do you know if Ballard was with Viking or
 17 AmericanWest before the merger?
 18 A. Viking.
 19 Q. Or the acquisition. Viking?
 20 A. Sorry, I keep on jumping the gun.
 21 Q. No. Maybe they didn't merge; maybe it was
 22 acquired. It doesn't matter.
 23 You mentioned that Mr. Nerdrum is an established
 24 customer, and I take it that his company, Salmon Bay Sand &
 25 Gravel, is also a customer?

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1 A. I need to ask Craig that question, but I can answer
 2 it.
 3 Q. Okay. Are you familiar with a company called
 4 Eastside Community Rail, LLC?
 5 A. I've seen it, but I cannot say why. I can't say if
 6 it was in your documents or if it is in my own portfolio at
 7 this time.
 8 Q. It was in the documents.
 9 A. Okay.
 10 Q. Is Eastside Community Rail, LLC, part of your
 11 portfolio?
 12 A. I don't know.
 13 MR. PASCHALIS: Can you clarify as to what
 14 documents you are referring to for my edification.
 15 MR. FERGUSON: I know it was in the subpoena.
 16 MR. PASCHALIS: The subpoena is what you're
 17 referring to?
 18 MR. FERGUSON: Yes.
 19 MR. PASCHALIS: Okay, thank you.
 20 A. I do not believe that Eastside Rail is a customer,
 21 a lending customer or otherwise, of mine.
 22 Q. Does the bank have a relationship with a gentleman
 23 named Doug Engle?
 24 A. I do not know.
 25 Q. A gentleman named Ernie Wilson?

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1 A. I don't, no. I guess the short answer at this 2 time, I don't have a full recollection of what the scope is 3 aside from what I wrote in the letter.	1 A. I do. I just wanted to make sure you were okay. I 2 thought you were going to say something else. Yes, I believe 3 I have an understanding, yes.
4 Q. So let me just back up because I am not trying to 5 trip you up here.	4 Q. So what was its purpose? What did you mean when 5 you signed your name to this letter?
6 A. That's fair.	6 A. What I thought I was signing is that Ballard
7 Q. Sitting here today, apart from the letter, do you 8 have an understanding of what Ballard is attempting to 9 accomplish in this proceeding?	7 Terminal had a previous lending relationship with 8 AmericanWest Bank and a depository relationship going back 18 9 years -- well, at the time, 17 years, almost to the beginning
10 MR. PASCHALIS: Object to the form; object on 11 the basis of asked and answered.	10 of Viking Bank. We had -- we have, based upon the strength 11 of the guarantors, or the signers, I should say, on the
12 A. I can't fully say. I can only say that it has to 13 do with the railway, and they want to expand their 14 operations. That's all I can say definitively.	12 checking account as well as the guarantors on the loan, that 13 we would be interested in exploring a financing package with 14 Ballard Terminal. However -- and I clearly didn't do this
15 Q. Have you ever been involved in an extension of 16 credit or financing for an expansion of railway operations?	15 well enough -- at this time we do not have any documentation 16 in order to make such a recommendation or decision on that,
17 A. Personally --	17 and we are not going to have the ability to do that until the
18 MR. PASCHALIS: Objection; asked and answered.	18 Board makes a decision, because we don't have any
19 A. Personally, no.	19 documentation in order to make a loan decision.
20 Q. Do you know if the bank would extend credit to an 21 expansion of Ballard's railway operations if Ballard had to 22 attempt to exercise the power of eminent domain to acquire 23 the property necessary to expand those operations?	20 Q. So let me stop you right there. What you need to 21 make a loan decision is you need documents from Ballard, 22 correct?
24 MR. PASCHALIS: Object to the form; 25 foundation; to the extent it calls for a legal conclusion;	23 A. Yes, I do. 24 Q. Okay. 25 A. I also would need to know the scope of the project.
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1 calls for speculation.	1 And this is probably where I would involve Craig Moore -- not
2 A. I don't have any answer to that. I'm not familiar 3 with eminent domain well enough to answer that question.	2 for today's conversation, but if I was dealing with a 3 conversation about eminent domain, because I've heard the
4 Q. Listen to what I'm asking, though.	4 words, but that's it.
5 A. Okay.	5 Q. Is there any policy at the bank that would require
6 Q. Do you know --	6 you to first have a decision from the Surface Transportation
7 A. No.	7 Board in hand in order to make a decision about the financing
8 Q. -- if the bank would extend financing to an 9 expansion of the Ballard's rail operations if Ballard had to 10 exercise the power of eminent domain to accomplish and pursue 11 those operations?	8 application? 9 A. There is no policy. 10 Q. Has any superior of yours told you, in order to 11 make a financing application, you would need a decision from
12 MR. PASCHALIS: Same objections and asked and 13 answered.	12 the Surface Transportation Board? 13 A. No.
14 A. I don't know.	14 Q. In your experience, have you ever given conditional
15 Q. So then looking back at the letter here.	15 approval for a loan application or financing request?
16 A. Excuse me, which one?	16 MR. PASCHALIS: Object to the form.
17 Q. Right, we have multiple copies. Exhibit 60. You 18 mentioned earlier that Mr. Cole had requested a character 19 reference; is that correct?	17 A. Yes. 18 Q. And that would be for a loan application? 19 A. Sorry. Yes.
20 A. That's my words, not his.	20 MR. PASCHALIS: Asked and answered.
21 Q. Okay, thank you for clarifying that. If you have 22 an understanding, could you describe for me what your 23 understanding of the purpose of this letter was?	21 Q. I did not mean to interrupt your flow. I stopped 22 you on that one sentence. You were explaining what it is 23 that you thought this letter would mean. If you can
24 MR. PASCHALIS: Object to the form.	24 continue.
25 Q. Do you understand the question?	25 A. Sure. Let's see if I can remember where I was.

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1 That our bank was -- I wanted to convey that our bank was
 2 capable of participating in a loan if it was large, but,
 3 since I didn't know the scope and I didn't know what was
 4 going to be offered up as collateral and what would be
 5 required, it may be that I just needed to write a letter or I
 6 needed to assure the signers that they had sufficient capital
 7 in order to do what they wanted or that they had private
 8 equity, as you mentioned earlier, and that they were going to
 9 have to be able to facilitate it that way. And we as a bank
 10 wanted to be involved, but really couldn't be involved until
 11 they would provide -- until they -- and I mean by they
 12 Ballard Transfer.
 13 Q. You mean Ballard Terminal?
 14 A. Damn.
 15 Q. It is okay.
 16 A. From here on out, if I say Ballard Transfer, I mean
 17 Ballard Terminal, but --
 18 Q. Fair enough. We all have to define the word. Keep
 19 going.
 20 A. Anyway, but that I needed to know what the scope of
 21 the project would look like before I knew how to proceed.
 22 Before I knew which documents to ask for, I need to know what
 23 they wanted to do ultimately. And Mr. Cole told me that he
 24 wouldn't know what that would look like until after the --
 25 until Ms. Brown and Office of Proceedings or Surface

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1 Transportation Board made a decision on what ultimately that
 2 looked like.
 3 Q. Did Mr. Cole ever tell you that the tracks, part of
 4 the tracks on the Eastside Rail Corridor, have been pulled
 5 up?
 6 A. He did.
 7 Q. Did he tell you that he believes it might cost as
 8 much as \$10 million to reinstall them?
 9 A. He did not.
 10 Q. All right. Based on what you know about the
 11 principals and their account information -- I am not asking
 12 you to disclose to me what that is -- but, based on what you
 13 know, would the bank be in a position to extend a loan by
 14 itself to Ballard for \$47 1/2 million?
 15 A. I'm sorry, could you give me that number again.
 16 Q. 47 1/2 million.
 17 MR. PASCHALIS: Objection; calls for
 18 speculation.
 19 A. I don't know the answer to that question.
 20 Q. Would the bank be in a position to extend a loan to
 21 Ballard, based on what you know about the accounts, for
 22 \$37 1/2 million?
 23 MR. PASCHALIS: Objection; foundation; calls
 24 for speculation.
 25 A. I can answer that I wouldn't know the answer to any

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1 number that you give me until they turn in an application
 2 that defined the scope of what they were looking to do.
 3 Q. Okay, great.
 4 MR. FERGUSON: I'd like to mark the next two
 5 exhibits here. This will be 62 and 63. Exhibit 62 is
 6 Ballard's reply brief filed with the Surface Transportation
 7 Board on December 6th. Exhibit 63 is a letter from Byron
 8 Cole dated December 5th.
 9 (Exhibits 62-63 marked for
 10 identification.)
 11 Q. So, Mr. Engman, let's look at Exhibit 62 first.
 12 A. Sure.
 13 Q. This is a document that has the pleading caption on
 14 the top, and it has some bold text where it reads, "Ballard
 15 Terminal Railroad Company."
 16 A. Excuse me. You said pleading?
 17 Q. Sorry. At the very top it says, "Before the
 18 Surface Transportation Board."
 19 A. Yes, got it.
 20 Q. And it has a number of signifiers on it.
 21 A. Yeah, yeah. Got it.
 22 Q. I would like you to look at page 5 of the document.
 23 A. Do you mean on the lower right-hand corner or the
 24 middle?
 25 Q. The middle. So middle page 5; lower, right-hand

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1 corner, page 8.
 2 A. Yes.
 3 Q. The first full paragraph that starts, "Also
 4 attached hereto"; do you see that?
 5 A. I do.
 6 Q. The second and last sentence of that paragraph
 7 reads -- actually, I am going to read the whole paragraph out
 8 loud here. "Also attached hereto is correspondence from
 9 Coastal Community Bank and AmericanWest Bank, the bankers for
 10 Ballard and Eastside Community Rail, LLC, a significant
 11 project supporter. Each of those banks stands ready,
 12 willing, and able to financially participate in the
 13 restoration associated with the reactivation of the subject
 14 rail line." And I'll represent to you that the letter that
 15 is referenced here and was attached to this pleading is
 16 Exhibit 60.
 17 A. Sure.
 18 Q. Your letter that you signed dated November 22nd.
 19 A. Okay.
 20 Q. Based on what you have told me, is the bank ready,
 21 willing, and able to financially participate in the
 22 restoration of the Eastside Rail Corridor?
 23 A. I feel, to answer that, implies that I know what
 24 the terminology "ready, willing, and able" mean. If you can
 25 restate the question, I could better answer it, but, as of

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ENGMAN/Marcuse 91 1 attorney for King County. I work in the civil division, so I 2 am like corporation counsel for the county. 3 A. Sure. 4 Q. I work with them on real property matters and 5 things of that nature. I just have one or two follow-up 6 questions. You mentioned earlier in your question and 7 answers with Mr. Ferguson that there were some circumstances 8 in which you would want to see a business plan in order to 9 evaluate a loan request; is that correct? 10 A. Correct. 11 Q. What are the circumstances in which you would want 12 to see a business plan? 13 A. I go by the feeling that it's better to have more 14 information than less information, and, if they have a 15 business plan that they want to provide to me, I would 16 welcome it in all situations. However, the only situation in 17 which I am required to get that information is if it is an 18 SBA loan and we're talking about using the SBA department in 19 order to guarantee a portion of that loan package. If the 20 business itself can rely on its existing cash flow and its 21 existing debt load, then there would be no reason for me to 22 get a business plan for the future. There would be no 23 requirement for me to get the business plan if the business 24 could support itself on its own merits -- on its own merits 25 and own collateral and everything as it stood before any	ENGMAN/Paschalis 93 1 know, and I would be happy to do so. 2 A. Okay. 3 Q. Fair enough? 4 A. Fair enough. 5 Q. So you allude to this a little bit in your letter, 6 but the relationship between Ballard -- and I mean Ballard 7 Terminal Railroad Company -- and AmericanWest Bank goes back 8 a few decades, correct? 9 A. Until 1996, according to my records, but I will say 10 that AmericanWest Bank does not keep records of any closed 11 accounts, so I couldn't tell you if it's further back than 12 that. 13 Q. Either way, you are encroaching upon your 18th year 14 of doing business together, correct? 15 A. As AmericanWest Bank, yes. I mean, as 16 Viking/AmericanWest Bank, yes, yes, yes, yes. As Nathan 17 Engman, no. 18 Q. Sure. The bank itself and its predecessors is what 19 I am referring to. 20 A. Yes. 21 Q. Would you characterize the relationship as strong? 22 MR. FERGUSON: Objection; vague. 23 Q. You can answer. 24 A. I know. I'm thinking. It is a good relationship, 25 yes. You need to be more specific if you want me to give --
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ENGMAN/Paschalis 92 1 other acquisition. Does that make sense? 2 Q. It is a complete answer. Based on your questions 3 and answers with Mr. Ferguson, I understand that you have not 4 seen a business plan from Ballard Terminal Railroad related 5 to reactivation of the Eastside Rail Corridor; is that 6 correct? 7 A. Correct. 8 MR. MARCUSE: Thank you. That was my 9 questions. 10 MR. WAGNER: I have no questions. 11 12 EXAMINATION 13 BY MR. PASCHALIS: 14 Q. Mr. Engman, I have a few questions for you. Due to 15 the circumstances of my examination, that being me asking you 16 questions by phone, I can't really pick up visual cues as to 17 when you are done speaking or whether you are in the process 18 of thinking, so I will do my best to allow extra time for you 19 to complete any thoughts. If it is awkward to any extent or 20 if I inadvertently cut you off, please let me know, and I 21 will let you finish your response. 22 A. That is not a problem. 23 Q. The same point that Hunter made at the outset, if I 24 ask you any questions that you need me to rephrase or you are 25 not clear to any extent, then please go ahead and let me	ENGMAN/Paschalis 94 1 it's a broad question as far as I am concerned. 2 Q. Well, how would you characterize the relationship 3 yourself in your own words? 4 A. The relationship, with the entire relationship, 5 when you take a look at both the Ballard Terminal as well as 6 ancillary relationships that are there as a result of the 7 signers and guarantors of the loan, it is quite strong, yes. 8 Q. Does that include Byron Cole and Paul Nerdum? 9 A. Yes, it does. 10 Q. We have discussed a little bit the lending history 11 that your bank has with Ballard Terminal. In the second 12 sentence of your letter, you specify that the bank has 13 provided BTRC capital loans for equipment and other works in 14 the past, correct? 15 A. Correct. 16 Q. And that Ballard has always paid on those loans as 17 agreed? 18 A. Correct. 19 Q. And you would have secured collateral in those 20 instances? 21 A. We did. 22 Q. And the final segment of that paragraph is that you 23 want to continue to help BTRC grow. 24 A. I do. 25 Q. That is accurate, correct?

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1 A. I do.

2 Q. And, as you have discussed in response to several

3 questions, you are certainly interested in lending to them in

4 the future?

5 A. I am.

6 Q. Again, you have discussed this in the course of

7 your examination from Mr. Ferguson, but let me just discuss

8 lending in general. Is it fair to say that the extent of

9 lending is frequently based on the collateral that is

10 offered?

11 A. I think that frequently would be speculation, but I

12 can say sometimes.

13 Q. Okay. So you take collateral into consideration

14 when you make a determination on the extent of AmericanWest's

15 lending, correct?

16 A. It is always taken into consideration, yes.

17 Q. In addition to, I think you said accounts

18 receivable --

19 A. Correct.

20 Q. -- among other things?

21 A. Correct. What other things are you saying, though?

22 Q. Well, you tell me. I know that you have kind of

23 gone over this a little bit, but we have collateral, we have

24 accounts receivable as factors that you consider. Is there

25 anything else?

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1 A. Yeah, personal assets.

2 Q. Personal assets, okay. Anything else?

3 A. I would say that it's business assets as a

4 secondary source of repayment, and, as a tertiary form of

5 repayment, it would be guarantors' own income and own assets

6 that they would be able to support it with.

7 Q. And those are the same considerations that you

8 would consider for Ballard Terminal, correct?

9 A. I would consider those for every customer, so yes.

10 Q. Okay. So you have collateral, tangible assets,

11 accounts receivable, and personal income, as well, correct?

12 A. Personal income and personal assets, as well, yes.

13 Q. Sure. And would tangible assets include land?

14 A. Depending upon -- well, yes, yes.

15 Q. And that would include something like track, as

16 well, correct?

17 A. This kind of falls into the collateral source like

18 agriculture. I'm not familiar enough to know with the

19 collateralization of track, but, assuming that it's legally

20 allowed to collateralize track, in that extent, yes.

21 Q. Okay, thank you for that clarification. And how

22 about machinery such as railcars?

23 A. Yes.

24 Q. And related rail equipments?

25 A. Yes.

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1 Q. So those would all be tangible assets that could be

2 used as collateral for a loan?

3 A. Correct.

4 Q. Now, there has been some discussion about the

5 things that need to happen to fully appreciate the scope of

6 any financing package with respect to Ballard's reactivation

7 of the Eastside Corridor; do you recall that conversation?

8 A. Yes.

9 Q. Now, are you aware that the portion of track that

10 Ballard is attempting to activate is currently owned by other

11 public entities?

12 A. I cannot be certain of that. It could have been a

13 part of our conversation, but I cannot say for sure.

14 Q. When you spoke with Mr. Ferguson about your

15 deposition, did he fill you in as to the background of this

16 proceeding at all?

17 A. Not to my recollection.

18 Q. What did you guys discuss?

19 A. To the best of my recollection, we discussed

20 whether I would be available to come in and do a deposition

21 or if we were going to be doing some sort of signed

22 affidavit. After that, I really -- I didn't -- I apologize

23 for not being an attorney here, but I don't write everything

24 down, and, because I don't and I did not take notes, I cannot

25 be sure what I talked aside from the affidavit piece.

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1 Q. Sure. You do not need to apologize for what you

2 don't remember or what you don't know, and you certainly do

3 not need to apologize for not being a lawyer.

4 A. Oh, my dad would disagree with you, but okay.

5 Q. Oh, no, you get that, too. So what was the nature

6 of the discussion about signing a declaration in lieu of a

7 deposition?

8 A. I don't even know if, to be honest, I had that

9 conversation with Mr. Ferguson, but I did have that

10 conversation with Ashley Sargeant and Craig Moore about two

11 different pieces of strategies that were going to be used.

12 One was going to be an affidavit form where questions would

13 be provided to me in which I would be giving a written

14 response, providing an affidavit, and then turning it in.

15 From what I understand from -- and I can't remember if it was

16 Ashley or Craig, but I think it was Ashley -- from what I

17 remember from Ashley is that she had told me that

18 Mr. Ferguson had told her that, ultimately, a deposition

19 would be in everyone's best interests because it would

20 ultimately be a shorter amount of time, and, if I could come

21 in at 9:00 on today, that would be -- we could just nip this

22 thing in the bud. And, again, that's, I believe, Ashley's

23 words, and don't quote me verbatim.

24 Q. Sure. And have you or anyone from your bank had

25 any other conversations with Mr. Ferguson or anyone else from

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ENGMAN/Paschalis 99 1 Stoel Rives? 2 A. Aside from talking to Mr. Ferguson's administrative 3 assistant in getting ahold of Mr. Ferguson or possibly the 4 receptionist when I was calling, it's nothing I am aware of. 5 Q. How about anyone representing in any capacity the 6 city of Kirkland? 7 A. I have been not -- aside from what I said of 8 getting numerous communications through mail, courier, and 9 fax, those are the only interactions, aside from a phone call 10 I had with Mr. Ferguson at one point in time, when I was 11 instructed to call him, I believe, by Ashley. And I do not 12 recall the contents of that discussion, except -- yeah, I 13 don't recall. I can't say for sure. 14 Q. Sure. What about for King County; have you had any 15 conversations with anyone with them? 16 A. No. 17 Q. And how about Sound Transit? 18 A. No. 19 Q. Now, you said you had received some documents by 20 mail and fax; is that accurate? 21 A. Documents by mail, fax, and, I believe, courier. 22 Q. And courier, okay. What were those documents? 23 A. Whatever I got, I forwarded over to Ashley. So I 24 believe they were subpoenas, but, to be honest, I lost track 25 after I got about the third or fourth one.	ENGMAN/Paschalis 101 1 A. Premature may have been a better word. Yes. To 2 me, when I wrote it, I felt that it was appropriate. I know 3 Mr. Cole wanted me to include other things, but I felt that I 4 only included language that I felt that I could -- that I 5 could really testify to. I guess now, in looking back at it, 6 whether it would be nearly impossible or premature, or I'm 7 sure we could use a couple of other adjectives there. I'm 8 probably getting the grammatics wrong. There are probably 9 other ways that I could word it; however, to me, what was 10 implied was I can't do anything until I get a financing 11 package request, and they're not going to give me a financing 12 package request until they know what's ultimately going to be 13 in the scope of what's permissible. 14 Q. Go on. 15 A. No. After that, I really don't have an answer 16 because it would make me speculate as far as to what that 17 would be. 18 Q. Sure. You discussed some of the language, the way 19 you phrased things in this letter. Now, you wrote this 20 letter, and you collaborated to some extent with Byron Cole, 21 correct? 22 A. I think that's a good way to phrase it, yes. 23 Q. It sounds like you reviewed everything quite 24 carefully and quite closely; is that accurate to say? 25 A. Well, considering there's misspellings and
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ENGMAN/Paschalis 100 1 Q. Okay. Well, let me represent to you that this 2 Surface Transportation Board proceeding deals with Ballard's 3 efforts to obtain reactivation rights held by other public 4 entities in order so that they can reinstitute rail service 5 on the Eastside Corridor? 6 A. That makes sense. That's about what I said I 7 believe, but I have no definitive information about which 8 entities they were. 9 Q. Sure. So those would be the entities that are 10 represented -- 11 A. I'm guessing those are the ones present today. 12 Q. Correct. So, that being the case, there is 13 language in here that you said was jointly written by 14 yourself and Byron Cole, indicating that -- this is in the 15 middle of the second paragraph -- that it's nearly impossible 16 to know the full scope of the financing package until the 17 Board makes its decision on whether to reactivate the 18 corridor. 19 A. Correct. 20 Q. Do you see that? 21 A. Yes. 22 Q. So does that sound like it makes sense to you, 23 that, given the circumstances that Ballard finds itself in, 24 it is premature to go ahead and nail down the specifics of a 25 financing package?	ENGMAN/Paschalis 102 1 grammatical errors, I thought I had, but this is why I'm not 2 a lawyer. But, in substance, I felt that I had reviewed it. 3 I felt that I had -- I felt that it accurately represented my 4 permission -- sorry -- my position within the bank, and that 5 was, as much as we want to do more business with Ballard 6 Terminal Railroad Company, I wasn't going to be able to do 7 that until there was an application and, frankly, until there 8 was a decision from the corridor giving them permission to do 9 so because, even if I would have been able to give them 10 conditional approval, we never would have given them firm 11 approval until we knew the scope of the request or scope of 12 whatever the Surface Transportation Board would have said. 13 And so I felt that it was appropriate for me to write the 14 letter or write the phrase in the second paragraph, but, 15 again, it was -- the wording, I felt it was good at the time. 16 Q. Well, notwithstanding any grammatical errors, you 17 took care to ensure that you could accurately sign off on the 18 substance of your letter and that it represented your 19 position, correct? 20 A. I did at the time, and I pretty much still do now. 21 I like your word better about premature, but, that aside, 22 yes. 23 Q. Let's talk about that then, premature. It sounds 24 like, when you get a financial package going, it requires a 25 lot of information that needs to be provided to you, correct?

Page 111	Page 113
ENGMAN/Paschalis 111 1 A. And, typically, the profits are what leads to that, 2 yes. 3 Q. Let me go back over some of my notes with your 4 conversation with Mr. Ferguson. 5 A. Sure. 6 Q. And, just to clarify, Mr. Ferguson threw out a 7 bunch of random numbers in the millions as to the size of the 8 loan, and you consistently answered that any specific amount 9 would have to factor in the collateral and the accounts 10 receivable, correct? 11 A. Is that addressed to Mr. Ferguson or me? 12 Q. That is to you. 13 A. Yes. 14 Q. So it is conceivable that, if the collateral and 15 the accounts receivable were to your satisfaction, there 16 could be a multimillion-dollar loan, correct? 17 A. That's speculation, but, assuming that we're all 18 speculating, it would depend on the size and the scope of the 19 loan for me to say yes, but yes. 20 Q. It is conceivable? 21 A. Yes. Yes. 22 Q. Now, you had mentioned that you have written in the 23 past letters for other bank customers similar to the one that 24 you wrote on behalf of Ballard correct? 25 A. I have written other letters supporting other	ENGMAN/Paschalis 113 1 regard, yes, I've written many of these types of letters. 2 Q. Okay, thank you for that explanation. 3 A. Advocation letters, if you will. Maybe that's 4 another way of saying. 5 Q. Sure. You are aware these letters are used by your 6 customers to help them engage in business transactions? 7 A. Facilitate whatever it is. Maybe they want to stay 8 in the country, and it's an INS letter. Maybe it's an 9 acquisition of a business letter, or maybe it's an 10 acquisition of a property letter. Mr. Cole's request was 11 not -- did not come across as surprising to me, and I felt 12 that, as long as I was able to say -- I was able to 13 articulate that they haven't applied for a loan with us yet, 14 I was making myself -- I was giving myself the proper cover 15 to say that I just wanted to do a loan with them. And I 16 still, frankly, do want to do a loan with them, but I have, 17 for better or worse, many customers that I want to do loans 18 for that I am unable to do loans for and that I am able to do 19 loans for, but it all depends on the size and scope of the 20 financing package, and I don't have that at this time. 21 Q. Understood. Did you tell Hunter that 80 million 22 was the largest loan that you are aware of your bank having 23 issued? 24 A. In this deposition, that number was one that I have 25 seen, and I was told by Craig Moore that, anything I was
Page 112	Page 114
ENGMAN/Paschalis 112 1 clients in whatever they were looking to do. I cannot say 2 that I ever wrote a letter for anyone wanting to acquire a 3 railroad, but I can say that I have written other letters for 4 other businesses wanting to make other acquisitions, growing 5 their businesses, or, as another example, for a customer who 6 wanted to buy a condo down in Malibu, I wrote a letter 7 basically saying that he had the full ability to do that with 8 cash on hand, because he didn't need a loan, he just needed 9 someone to say that he had enough money to do it. 10 Q. Sure. So, in any event, it is not unusual for a 11 customer to approach your bank and say that I would like a 12 letter to be able to help me undertake a business 13 transaction? 14 A. Well, to me, I define it as a character reference 15 letter. That's not a legal definition; it's just how I kind 16 of refer to it in my own head. But it's someone saying, 17 look, this person banks with me, they have a relationship 18 with me, I want to do more for them, or I have of the ability 19 to facilitate them, their request. If I have the ability to 20 say that it's approved or guaranteed, I will do so. If I 21 don't have the ability to say that, I will say that I don't 22 have ability to do so. I advocate wherever I can for my 23 clients, but, at the end of the day, if I can't say whether 24 it's approved or not, I will usually add language that says 25 whether I can or cannot make a decision. And, in that	ENGMAN/Wagner 114 1 personally aware of, I could go ahead and address. It was a 2 mistake that I saw it; it wasn't intended to come to me, but 3 I did see a boat that was financed in conjunction with many 4 other different parties for a total of \$80 million, correct. 5 It was not my loan. I got to about page 5 before I realized 6 it wasn't supposed to come to me. But we still did it, I 7 believe. 8 MR. PASCHALIS: Why don't we take a short 9 break, and I will see if I have anything else. 10 MR. FERGUSON: Okay. 11 (A brief recess was taken.) 12 MR. PASCHALIS: We can go back on if you guys 13 are ready. 14 MR. FERGUSON: Yeah, we are back on. 15 MR. PASCHALIS: Mr. Engman, that concludes my 16 questioning. Perhaps someone else with you has a few more 17 follow-ups. 18 MR. FERGUSON: Jordan has got one, and then I 19 have got just a couple. 20 21 EXAMINATION 22 BY MR. WAGNER: 23 Q. Mr. Engman, you said earlier your bank does 24 preapprovals for loans? 25 A. I have never been in a bank that doesn't do a

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1 preapproval of some sort.

2 Q. So, if Mr. Cole had come in on that day that you

3 worked on the letter and said the Surface Transportation

4 Board really needs to know whether we can construct and

5 operate the railroad that we have said that we are going to

6 operate and that we have sufficient funds to do that, can you

7 please give us a loan preapproval for blank dollars, would

8 you have done something like that for a customer?

9 MR. PASCHALIS: Can I interject and just ask

10 the court reporter to repeat the question.

11 (The previous question was

12 read back.)

13 MR. PASCHALIS: Okay. I will interpose an

14 objection based on form, foundation, and calls for

15 speculation.

16 A. We would have the ability to run a scenario through

17 our process, loan approval process. It would have depended

18 upon size and scope of what they were ultimately asking us to

19 do, but, if we're making the assumption that someone had

20 given us a specific size and scope and specific information,

21 we could have given a more firm letter -- and I do say more

22 firm because nothing -- I've never -- I've always included,

23 even on the preapproval letter, this is not a formal

24 approval, and it cannot be a formal approval until X, Y, Z

25 things are cleared, addressed, whether it be title or what

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1 you said, eminent domain, or all the other things, but, that

2 being said, that, if someone asked us to go ahead and do a

3 financial review, we could have done something, but, as to

4 the specifics of what the language we would have used at that

5 point in time, I can only speculate, and, therefore, I don't

6 think it's appropriate for me to answer what that ultimately

7 would look like.

8 Q. If they had come in with all the information you

9 would need to process a loan on that day or they said,

10 whatever information you need, here it is, can you go ahead

11 and process the loan, would you guys do that?

12 MR. PASCHALIS: Object to the form; foundation

13 and calls for speculation.

14 A. I feel that, as you ask that, it's too vague a

15 question because you haven't limited the scope of what you're

16 ultimately asking for.

17 Q. So the scope of what I am asking for is Byron Cole.

18 Byron Cole comes in and says --

19 A. It could be anyone, but yes.

20 Q. It could be anyone. Byron Cole says we are trying

21 to acquire this railroad, and we need to convince the Surface

22 Transportation Board that we are able to do it and we have

23 the financial ability to be able to do it. Said all the

24 information you could possibly need, as in one of our

25 exhibits, a list of documents that you would ask for if

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1 somebody was applying for a loan.

2 A. Yes.

3 Q. Could you would you guys do that for somebody?

4 MR. PASCHALIS: Objection; form; foundation;

5 calls for speculation.

6 A. Would we definitely do it for someone?

7 Q. Would you do that for somebody before the Surface

8 Transportation Board approved what they were asking about?

9 MR. PASCHALIS: Same objection.

10 A. Again, I would need to know the full size and

11 scope. To me, I would need loan amounts; I would need

12 collateral amounts; I would need a lot more information than

13 anyone today or beforehand has addressed. Mr. Ferguson tried

14 to do that when he said what about a loan of 47 million, what

15 about a loan of 37 million, but, again, until I get all the

16 facts, I cannot say what we would have done, and I'm not in a

17 position -- I'm only in the position to say, yes, we would

18 have taken a look at the documentation and the application.

19 I can't say whether we would have given approval until I

20 looked at the full size and scope.

21 Q. Right. And so, if you had the full size and scope

22 of what was being asked for -- of what their business plan

23 was and you had every document that you asked for from them,

24 would you guys be able to make a loan before the Surface

25 Transportation Board ruled?

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1 MR. PASCHALIS: Same objections.

2 A. I hear you getting closer to size and scope, but,

3 as I said before, if they said they needed a \$200,000 loan,

4 which was going to be completely secured by a CD, yeah, I

5 could do that. If they were going to say they wanted a

6 \$4 million loan that was going to be secured by business

7 assets, I couldn't answer that. And because it's not going

8 to fall under my purview; it's going to go to our commercial

9 banking center. I know also CBC; it's confusing. But it

10 would have gone to our commercial group. They're the only

11 people that could really answer that question definitively.

12 MR. WAGNER: Okay.

13

14 EXAMINATION

15 BY MR. FERGUSON:

16 Q. Just a follow-up on questions Mr. Paschalis was

17 asking, and it relates to what Mr. Wagner just asked.

18 A. Yes.

19 Q. Based on what you know about Ballard's accounts and

20 those of its principals, had Mr. Cole or someone else for

21 Ballard come to you with a business plan, with whatever

22 documents else that you might require of him, he met all of

23 your requests for information, and he asked you, would you

24 please undertake the process of evaluating this application

25 -- I am not asking if you would make the loan; I am asking if

EXHIBIT 7

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731)

BALLARD TERMINAL)

RAILROAD COMPANY, L.L.C.,)

- ACQUISITION AND EXEMPTION -)

WOODINVILLE SUBDIVISION)

STB DOCKET NO. AB-6 (SUB NO. 465X))

BNSF RAILWAY COMPANY)

- ABANDONMENT EXEMPTION -)

IN KING COUNTY, WA)



The deposition of DANIEL T. BEHR, taken in the above-entitled cause, before Gina M. Luordo, a notary public of Cook County, Illinois, on February 12, 2014, at 525 West Monroe Street, Chicago, Illinois, at the time of 10:20 a.m., pursuant to Notice.

Reported By: Gina M. Luordo, CSR, RPR, CRR

License No.: 084-004143

1 this.

2 Q. We saw the name of a Douglas Olds from
3 time to time.

4 A. Right.

5 Q. Did you ask him if he had any responsive
6 documents?

7 A. He doesn't really have -- I mean, other
8 than -- well, I did not ask -- let me see. Yes, I
9 did actually. I asked him if he had anything. A
10 lot of those are erased, you know, because my
11 mailbox fills up. I could re-query, but --

12 Q. If you could, I would appreciate that. I
13 think those documents would be responsive, and it
14 would be good to get them if we could.

15 A. Okay.

16 Q. Let me ask you just by way of background,
17 can you give me a brief summary of your
18 professional background and what you do today at
19 EB5.

20 A. You may have a copy of that there. Here
21 it is. Well, related to the railroad, I started
22 out with a terminal carrier, a terminal -- you know
23 what I mean by a terminal carrier?

24 Q. Uh-huh.

25 A. At the beginning of my career. I wore a

1 lot of hats on the railroad anything from
2 industrial development, industrial economic
3 development, marketing. I actually operated
4 trains, was a switchman on the ground, even was
5 part of an operating crew, twisted a few wrenches
6 on locomotives, very broad background.

7 Q. Roughly what was that period of time?

8 A. The period of time was about 1987 through
9 '91 or '92 where I wore lots of hats on the
10 railroad. And I also --

11 Q. What was it called?

12 A. The Minnesota Commercial Railway up in
13 Minneapolis-St. Paul. I also wrote all the
14 computer programs. My official title was director
15 MIS, and as part of my responsibilities --

16 Q. Excuse me. What does MIS stand for?

17 A. Management information systems. As part
18 of my responsibilities and professional expansion,
19 I traveled around to other short line railroads and
20 was one of the beginning pioneers in the U.S. that
21 put U.S. short lines on computers, PCs. I wrote
22 the programs. I studied their operations. I
23 physically did the work so that I could understand
24 the programming so I could program because you
25 can't envision the function unless you actually do

1 it. You can't do it well anyway.

2 Q. I understand.

3 A. So I did all those things, and as a
4 result, I got a very broad background as to how
5 things worked in the short line industry and the
6 whole railroad industry actually working with the
7 Class 1 railroads as well as the railroad I worked
8 with and other client railroads.

9 Q. After that, what did you do?

10 A. I had some ventures and also was doing
11 some consulting. As another example, I wrote the
12 application to the Ohio Department of
13 Transportation for the Ohio Central Railroad for
14 the panhandle line, which resulted in their
15 successfully renewing their succession with the
16 state of Ohio. I worked with Wheeling and Lake
17 Erie on a couple of projects. At Wheeling-Lake
18 Erie, I -- let's see. There was a coal and ash
19 traffic opportunity that I helped develop and
20 helped them work with Class 1s and also the shipper
21 so that they could capture the traffic. In
22 addition to that, I did a study for a potential
23 commuter rail on their line going to Cleveland,
24 Ohio.

25 Q. I see you're reading from -- are these

1 some of the notes that you're reading from?

2 A. These aren't notes. These are just -- I'm
3 just using these as a punch list. Next?

4 Q. Let me try to skip ahead, and I appreciate
5 the detail. They are in the record, although, I
6 didn't bring them today, the biographies that you
7 had submitted through Eastside Community Rail, and
8 I'm happy, if you want, to put that on the record.
9 I really wanted to get more in your own words an
10 overview of your professional experience.

11 A. Okay. No surprise that due to my
12 background in transportation and infrastructure, I
13 became interested in finance. I ended up working
14 for an investment banking firm downtown.

15 Q. Downtown Chicago?

16 A. Yes. I got my Series 7, had worked for
17 them as vice president transportation and
18 infrastructure, and that's the sector I selected
19 because I know something about it, and I have the
20 contacts. From there, it was not such a good time
21 to be doing that. That was in '08. We all know
22 what happened in '07, '08 through '10.

23 And so after working with them on a number
24 of projects, they decided to go back into the
25 energy field whence they came. Then I continued

1 with one of the colleagues I met at the firm and
2 formed our own form.

3 Q. Is that EB5?

4 A. That's EB5 Capital Partners.

5 Q. Again, just in very general terms, what is
6 the nature of EB5's business?

7 A. What we do is we're a business advisory
8 firm. We will look at opportunities, and we will
9 participate if we see that there are opportunities,
10 potential opportunities. We've been successful,
11 and in the process, we've established a freight
12 forwarding company in Germany, which was profitable
13 last year. We're establishing something in Denmark
14 this year.

15 We have established an international food
16 import and export company where we have a plant in
17 El Salvador, and we -- as of a couple of weeks ago,
18 we have 16 products, 16 SKUs as they're called, in
19 30 Walmart stores on the east coast. So where we
20 see opportunities, we participate.

21 Q. What do you mean by participate?

22 A. Well, we take an equity position. We'll
23 become part of the company, help them raise
24 capital.

25 Q. And how do you help raise capital other

1 than your own investment?

2 A. We take a look at the -- we look at the
3 potential of a company, and we look at what
4 opportunities there are for expanding their
5 business activities. So we look at that, and if
6 we're excited, we think there's something there,
7 we'll continue. Then we become involved.

8 Q. Maybe I misunderstood. When I heard you
9 say -- I thought I heard you say locate capital.
10 Maybe I'm misreading it.

11 My question was do you also -- in addition
12 to investing yourself, which I think you said --

13 A. We source capital is what we did.

14 Q. That's where I was going. Who do you
15 source it from?

16 A. We have a number of contacts in various
17 industry sectors that we speak with, and they're
18 always on the lookout for opportunities, so we keep
19 them apprised. We have a database of people that
20 we can call upon.

21 Q. I have seen the term EB5 used. In
22 connection with some sort of -- and I don't know
23 how this works, but investment-based immigration --

24 A. That's how it started.

25 Q. -- practices.

1 relationship between Eastside Community Rail and
2 Ballard Terminal Railroad?

3 A. In effect, they're -- my understanding is
4 that they're contracting. In effect, they're the
5 operator.

6 Q. They being Ballard?

7 A. They being Ballard is the operator of the
8 service, the freight service today.

9 Q. I'm going to try to keep it straight and
10 refer to Ballard and Eastside Community Rail as
11 distinct entities. If you think that I've said it
12 wrong, please correct me. I want to make sure that
13 we understand each other.

14 A. Okay.

15 Q. I may stop and ask you to clarify the
16 same.

17 A. Okay.

18 Q. Describe to me your background. When did
19 you first come in contact with Eastside Community
20 Rail?

21 A. When, Doug Engel called me. I forgot what
22 year that was. Was that 2010 or '11? Anyway,
23 let's just say it's 2011. I'm almost sure that's
24 when it was. He called me and asked if I would --
25 I guess it was -- there was a conflict with his

1 former partner named Tom Payne whom I had also
2 known in railroad circles. It's a small incestuous
3 society. What he asked me to do was to write a
4 letter and to testify as to his character. I said
5 I couldn't get involved with that. What do you
6 have in mind or what are you trying to do? I
7 wanted to try to understand what was behind his
8 request.

9 He said well, he said that he was trying
10 to reactivate the railroad and kind of pick up the
11 pieces that Tom had -- Tom was involved. Things
12 were in disarray. There was a conflict between the
13 partners. There was financial misconduct on the
14 part of Tom Payne. I wasn't a party to that. I
15 didn't really know about it, and I wasn't going to
16 really get involved in that, so I declined. Then
17 he explained further that, you know, that was an
18 opportunity that was developing and would I look at
19 it further. It's a little hazy because it's some
20 time ago.

21 I said well, tell me a little bit more
22 about it. I said that I would be willing to look
23 at it a little further on a time basis, would
24 analyze it as a consultant. I would go in and take
25 a look at it and give him an outside opinion, a

1 dispassionate opinion. That's really how it all
2 started. It was all dispassionate. Personalities
3 and conflicts between people, I can't get involved
4 in that, but I can get involved if there are
5 opportunities.

6 So I went and I took a look at -- I took a
7 look at the line. I took a look at what traffic
8 they had and the potential for increased traffic.
9 There was a case to be made for that. And after
10 looking at it, I thought to myself there certainly
11 is and agreed to work a little bit further with him
12 on that.

13 Q. Let me stop you and just ask you --

14 A. That's how we met.

15 Q. Why don't we do this. Let me mark this as
16 Exhibit 3.

17 (Whereupon, BEHR Deposition
18 Exhibit No. 3 was marked for
19 identification.)

20 BY MR. PILSK:

21 Q. Mr. Behr, I've handed you what's been
22 marked as Exhibit 3. This is an engagement
23 agreement for Eastside Community Rail, LLC dated
24 September 17, 2012. Let me ask you to take a look
25 at it and see if you recognize it.

1 A. The length of the line.

2 Q. From where to where roughly?

3 A. From Woodinville all the way down to
4 Bellevue. Actually, we went down to Renton and
5 looked at the entire line.

6 Q. And how did you do that?

7 A. By automobile.

8 Q. I'm sorry?

9 A. He drove.

10 Q. I'm sorry. Thank you. I couldn't hear.

11 Did you look at the line north of

12 Woodinville?

13 A. Well, there's -- oh, yes, all the way to
14 Snohomish. We did go to Snohomish, yes.

15 Q. Did you look at the spur that goes down
16 from Woodinville to Redmond?

17 A. Yes.

18 Q. You said it was by car. Did you get out
19 and walk any of the line?

20 A. Sure. Yes.

21 Q. Do you remember generally what spots or
22 areas or sections you walked? Let me back up.. I'm
23 mainly interested in what I'm referring to as the
24 line between Woodinville and Bellevue.

25 A. Yes. You're talking about -- there are

1 Q. -- or at Safeway?

2 A. No.

3 Q. I'm sorry. Go ahead. You said other
4 things you saw?

5 A. So other things that I saw were there were
6 a number of buildings, some vacant, one in
7 particular, the International Paper building, which
8 looked good because it had -- it was at one time
9 rail served. They had the switch. They had a
10 switch off the main or a lead off of the main line
11 that went into the building and was available. And
12 there were other buildings that had sidings going
13 into them. You can't have rail if you're not rail
14 served, and they were rail served. That didn't
15 hurt. That was on the east side of the railroad.

16 There was also a Lowe's close by, which I
17 thought had some potential, some traffic potential.
18 But on the west side of the railroad, I noticed
19 there was a lot of vacant land that was zoned
20 properly for transload for reload operations.

21 Q. Okay. This is on the -- I'm sorry --

22 A. That's on the west side. There's --

23 Q. But generally, is it the west side?

24 A. Of the right-of-way.

25 Q. Right, opposite, if you will, the

1 International Paper building?

2 A. It extends actually considerably south.
3 All that vacant land extended considerably south as
4 well as north of the International Paper building.
5 That is -- when you look at a railroad, that is the
6 primordial ooze you look for for potential traffic
7 for emerging traffic possibilities, especially what
8 I came to learn about the port.

9 Q. What did you learn? This is the Port of
10 Seattle?

11 A. Yes.

12 Q. Did you talk to anyone from the port?

13 A. No, I did not. I did my own independent
14 study.

15 Q. What was -- what study did you do?

16 A. It was part of a -- I'm getting my Ph.D.,
17 and what I'm doing is it's on -- it's in applied
18 economics, and my thesis is applying the short line
19 railroad model to Europe, does it work or not, yes,
20 no. There's a lot in between yes and no as you can
21 appreciate.

22 Q. It makes a good thesis.

23 A. It is. Nobody has done it. What I saw in
24 that -- one of -- you do a -- you know what I mean
25 by a rubric? Do you know what a rubric is?

1 Q. I think I do, but why don't you tell me
2 what you mean by it.

3 A. It was part of the curriculum. Part of
4 the curriculum was some base courses that you had
5 to take, and there was a course that I took on port
6 economics. You have to do it. It's part of the
7 whole -- it's a required course. Anyway, I took
8 the course, and things sprang from that. They
9 looked at ports all over the world. There were
10 comparisons. One of the topics that came up or
11 papers that were done, including participation of
12 the University of California, I think that was down
13 in Long Beach, there's something called METRANS.
14 Do you know what METRANS is?

15 Q. No.

16 A. Urban freight is what the theme is.
17 Anyway, the focus there was ports, what makes them
18 competitive or not. So no surprise that some
19 research developed out of that as part of my
20 thesis. I looked at what was competitive or not
21 and what could make the port more competitive and
22 what the need was. The need was, what emerged out
23 of that is there was a need for inland ports
24 because of congestion. That's all sorts of
25 externalities associated with the ports.

1 Q. Okay. Let me -- I'm sorry. I know you're
2 getting wound up to talk about your thesis and --

3 A. No. It's more than a thesis. There's
4 actually a business proposition that emerged out of
5 this, so it's very valid in this. It's not about
6 the thesis. It's not academic.

7 Q. Let me ask you this. I appreciate that,
8 and I understand you're in the business of what
9 you're describing.

10 A. That's right. They're complementary.

11 Q. Did you present that proposition to
12 Mr. Engel?

13 A. I did have discussions with him about
14 that.

15 Q. Was that -- I don't mean to make this
16 sound pejorative, but did you present a paper? Is
17 there documentation of that, or did you just
18 present it to him orally?

19 A. I presented it him to orally and said it
20 was a work-in-progress, which it was at the time.

21 Q. Has your thesis been submitted? Is it
22 completed?

23 A. No. I'm ABD. Do you know what that
24 means? All but dissertation.

25 Q. Luckily not personally familiar, but

1 well-familiar with --

2 A. Okay.

3 Q. Did you present any of the underlying
4 analyses or studies that either you did or reviewed
5 in connection with your thesis to Mr. Engel?

6 A. I did some of it, but it was, as I
7 mentioned, a work-in-progress, and it is -- it was
8 and is developing right now.

9 Q. Other than Mr. Engel, did you make this --
10 did you give your, lack of a better word,
11 presentation or argument to anyone else in
12 connection with the Eastside Community Rail
13 opportunity?

14 A. I did talk to a short line operator about
15 it, but only after he identified it, identified a
16 similar opportunity to me because I was waiting to
17 really -- anyway, the long and the short of it is
18 that he mentioned it to me prior to my mentioning
19 it, and then we came together. It was very
20 interesting how it all complemented.

21 Q. Who is he?

22 A. His name is Drew Wilson.

23 Q. Who is he?

24 A. He is the president of U.S. Rail Partners.

25 Q. And did anything further come of your

1 discussions with Mr. Wilson?

2 A. Actually, it did.

3 Q. And what happened?

4 A. He's very interested, and part of the
5 reason why is he's already operating a rail line in
6 the state of Washington. Why this is important and
7 why he sees an opportunity for that is because he
8 sees that traffic can come in from the Port of
9 Seattle to an inland port, which would be, of
10 course, in the Bellevue area where -- do you know
11 what I mean by stuffing and destuffing containers?

12 Q. Not specifically, but I can imagine.

13 A. Let me give you some background so you
14 understand how all this works.

15 A maritime container could be a 20 or a
16 40. Usually in this case, it's a 40. Well, it
17 could be 20 or 40. A maritime container will come
18 in. Maritime containers are more robustly
19 constructed than are domestic containers, and the
20 reason for that is because containers are stacked
21 one on top of another, so they have to have this
22 robust construction.

23 What happens with a maritime container is
24 if it goes to eastern points from a western port,
25 what do you do with the container once it arrives

1 at its destination? Hopefully you can get a round
2 trip, not often. And what ends up happening is
3 that container has to go all the way back to the
4 port of origin or to a pool on the west coast so
5 that it can then be put onto a ship and go back to
6 the Pacific -- generally Pacific Rim origins where
7 it could be reloaded and come back to the U.S.

8 That's expensive. That makes it
9 uncompetitive because a freight forwarder, shippers
10 will experience -- now, this is important.

11 Q. I'm with you.

12 A. Will experience higher -- much higher
13 rates, relatively uncompetitive rates if they have
14 to include the cost of that empty shipment of the
15 container back. So what steamship lines who --
16 steamship lines and/or owners of containers will do
17 is they will try to avoid the shipment of that
18 commodity to the east using that container.

19 What does that mean? That means that the
20 container will come into the port, and if it's
21 going to a destination that doesn't have a pool in
22 it, you'd have to pull the contents out and reload
23 that into a domestic container, which will then go
24 either by truck or will go by rail to eastern
25 destinations. Just call it other destinations. .It

1 doesn't have to be eastern. It could be
2 southeastern. It could radiate out from the port.

3 Therein lies an opportunity, and so what
4 the good Mr. Wilson identified is that if
5 containers could come into a transload point in the
6 Seattle area destuffed, in other words, unloaded
7 and reloaded, stuffing, therefore, destuffing and
8 stuffing, into a domestic container and put on the
9 rail and then go outbound, you have trips in both
10 directions, and you solve the problem. You solve a
11 problem of not having to deadhead an empty
12 container all the way back to the port, which would
13 result in a lower rate, and on top of it, what will
14 happen is it will give -- there's economic
15 opportunity.

16 There's the handling fees which you'll
17 benefit from and all the ancillary benefits of what
18 happens within a terminal. That means you can
19 clean. You can do repairs. You can store. You
20 can provide chassis. There's all sorts of
21 ancillary activities that result from that.

22 Equally important on a larger scale is it
23 makes the port more competitive, which means more
24 traffic, so therefore, you would get more traffic.
25 So that's what has emerged, and so good Mr. Wilson

1 recognized that simultaneously, not together. I
2 didn't make him aware of it. He made me aware or
3 he made me aware that he was aware of it.

4 Q. When did you talk to him?

5 A. Discussions are ongoing.

6 Q. When did you first talk to him?

7 A. Maybe last year.

8 Q. To roll back a little bit, so you went on
9 the two site visits, and the second one was, you
10 think, about the summer of 2012. I think that's
11 what you said.

12 A. Right. I would have to go back. There
13 could have been three visits actually now that I
14 think about it.

15 Q. The agreement that we've marked as
16 Exhibit 3 is dated September 17, 2012.

17 A. Yes, so there was something in '12.
18 That's right. There would have been.

19 Q. After your second site visit, what else
20 did you do for Eastside Community Rail?

21 A. After this agreement?

22 Q. Well, after your second site visit.

23 A. Did some more research on my own. Part of
24 that was this independent research that I told you
25 about, and also I had spoken to people in the

1 they know they can make interchange, if they know
2 they can have rail service. It could only be in
3 their benefit to accept rail service, so the answer
4 is one would more than reasonably expect that they
5 would. They want and need -- they want and need
6 rail service because it improves their economic
7 position. It helps their business grow.

8 Q. But are you personally aware of any
9 company that has made that kind of commitment?

10 A. No. I think you should direct that to
11 Doug Engel.

12 Q. Looking at the paragraph on the second
13 page of your letter -- I'm sorry. I apologize. I
14 did have one more question back on the first page.

15 In the last paragraph, you mention the
16 possibility for excursion train, and it would
17 further increase the line's economic viability and
18 value both to its existing and future rail service?

19 A. Yes.

20 Q. How does excursion line fit into the plan?

21 A. Well, it would certainly contribute to the
22 overhead, the revenue of that line. You would be
23 able to -- the excursion line would contribute to
24 the bottom line and also to the maintenance of the
25 infrastructure. There is actually a very good

1 business case to make.

2 I know this personally, and the reason for
3 that is I happen to know that the prior operator on
4 that line with the dinner train was a \$10 million
5 per year plus business, very successful and only
6 left because the line was sold by the BNSF to King
7 County, but would have gone on indefinitely. And
8 they had enough confidence in the area that they
9 tried to relocate to Tacoma. Since then, it turns
10 out that there's even more cruise ship passengers
11 that are now going into the Port of Seattle which
12 further bolsters their case because this is a side
13 trip. This is part of the package they can offer.

14 But further to that, I actually did an
15 appraisal of the dinner train, the prior dinner
16 train for a bank, so I know a little bit about what
17 the previous operation was. I appraised that and
18 know that there is a commercial case to make for
19 that, a very good business case.

20 Q. Do you know why -- I'm asking if you know
21 why Eastside Community Rail or Ballard haven't
22 simply started excursion service already? They
23 don't need STB approval for that. I'll make that
24 representation.

25 A. Sure, but they need to -- there's a lot

1 more to it. There has to be a marketing push. You
2 need to acquire equipment. And most importantly or
3 equally, I can't say mostly, but equally
4 importantly, they have to -- there's a lead time
5 involved in working on the infrastructure to accept
6 the train, so there is a business case to make for
7 that.

8 Q. But they haven't done that, correct?

9 A. No. They're focusing on freight, which is
10 really what they ought to be doing right now.

11 Q. Did Doug ever tell you why they didn't
12 start excursion service earlier before the tracks
13 had been removed?

14 A. No. I think there was always a focus on
15 continuing to serve the rail customers and to
16 develop that traffic concurrently as freight
17 service ramped up. They would be working -- there
18 would be other people that he was associated with
19 that would be working on the excursion train.

20 Q. Is that Kathy Cox?

21 A. Kathy Cox, yes, but the focus on our end
22 was freight. Rightfully that's where the focus
23 should be.

24 Q. Looking at the last paragraph of the
25 letter on the second page of the letter, you say

1 Have you put together as part of making a business
2 case what the full capital needs would be to
3 reactivate the service, including whatever rolling
4 stock they need, including acquiring interests in
5 the right-of-way, including replacing and
6 rehabilitating the track?

7 A. I've done -- I've done portions of that,
8 but the problem is that it's a chicken-egg
9 scenario, which I'm sure you can understand. You
10 have to -- the traffic will develop, but you need
11 to connect that track. I believe there is
12 sufficient traffic to justify it, especially
13 concentrated in the Bellevue area. There's quite a
14 case to make for that.

15 Q. But you haven't put the hard numbers
16 together to make that case?

17 A. No, but you have a pretty good idea
18 through experience. You can eyeball something and
19 have a pretty good idea as to what makes sense.

20 Q. Is that where your analysis is right now?

21 A. It is -- we're enthusiastic and anticipate
22 a lot of traffic development.

23 Q. Do you have an understanding of what, and
24 I'm not sure actually if it's Ballard or ECR, but
25 what the overall financing plan is to reactivate

1 the rail service?

2 A. I have a broad idea. I don't have any of
3 the documents in front of me because of the problem
4 that I've had.

5 Q. What's your -- as best you can recall,
6 what is that understanding?

7 A. My understanding is that the capital would
8 come in. You would make a -- first declare to an
9 investor what would be needed, what you would use
10 the capital for and how you would allocate the
11 capital. Some of it would be for the
12 infrastructure, and some of it would be for market
13 development, for SG&A, sales, general and
14 administrative, and so you would have to hone that
15 down. I have an idea, but I'd work with Doug to
16 refine that to make a presentation to investors.
17 But before that, you have to come up with the
18 traffic projection, which we're working on with him
19 right now to make the business case.

20 Q. Do you have an understanding of what
21 Ballard's or -- either Ballard or Eastside
22 Community Rail's current financial resources are?

23 A. Actually, they're increasing, but I don't
24 have -- I don't have a clear idea on what else
25 needs to develop since I last spoke to Doug, but he

1 has developed some support.

2 Q. In your letter at the end, the last
3 sentence, you say ensuring that this portion of the
4 line is preserved and operable is crucial to and
5 further enhances the business case for an
6 economically viable and important rail asset in
7 this area.

8 A. Yes.

9 Q. What did you mean by that?

10 A. You have to connect to the Bellevue area
11 where a concentration of traffic will come.

12 Q. And if you can't connect, then the
13 opportunity is lost?

14 A. Well, it doesn't help, so it needs to be
15 re-connected.

16 Q. Other than what's spelled out in your
17 agreement with Eastside Community Rail, have you,
18 by you, I mean EB5, made any commitment to either
19 Eastside Community Rail or Ballard to secure
20 investors?

21 A. Just what's in the letter.

22 Q. Have you made any commitments or been
23 asked to raise -- let me ask it two ways.

24 Have you been asked to raise any specific
25 amount of money?

1 Q. You may have answered this earlier, but in
2 a -- let me strike that.

3 Have you made any contact with Boeing
4 about using the line?

5 A. I haven't, but there's a contact that I've
6 spoken to who is in the process of contacting them.
7 I need to make a call and find out if that's
8 happened.

9 Q. Who is that contact if I can ask?

10 A. That's proprietary.

11 Q. We do have a protective order in the case.

12 A. The answer is no to that question right
13 now.

14 Q. So the name would not leave this case. It
15 would be filed under seal. It would not be made
16 public.

17 A. The answer to the question is let me find
18 out what the status is first and see if he objects
19 to that. Relationships are delicate, and I don't
20 want to -- I'm not going to do that.

21 Q. I appreciate that. I'm just going to
22 state my piece, which is that we'll reserve the
23 right to file a motion to compel if we think we
24 need to. I understand your position. I'm not
25 trying to get in the way. I just want to state

1 second.

2 (Whereupon, a short break was
3 taken.)

4 MR. PILSK: I have no further questions subject
5 to -- only if there's any recross after Mr. Tobin
6 asks his questions if he has.

7 MR. TOBIN: I just have a few.

8 EXAMINATION

9 BY MR. TOBIN:

10 Q. Mr. Behr, referring to Exhibit No. 2,
11 which is your past professional experience, you
12 have listed in Items 2 through 6 names of
13 railroads. Were those railroads for which you
14 obtained capital for development projects, or
15 generally without delving into it, what were those?

16 A. Well, starting with No. 4 on the Blackwell
17 Northern Railroad, I was brought in by the
18 Blackwell Industrial Authority to evaluate the line
19 in its current condition, look at what it would
20 take to bring the line up to a condition of where
21 it could accept unit trains. And by the way, unit
22 trains are another source of potential business
23 here in this line.

24 And thirdly, if the unit train traffic
25 were to come about, which it looks like it is going

1 to come, how would they get the money to renovate
2 the line? So that was the work involved in that,
3 and that was last year. Last August, I think, I
4 did that. It was in Kansas and Oklahoma.

5 Then on the Fitchburg & Oregon, Wisconsin,
6 that was a dormant line that was owned by the
7 former Chicago Northwestern, and I was retained by
8 the City of Fitchburg and Oregon to see what could
9 be done by reactivating it and making a business
10 case for that. What is interesting is there are a
11 lot of parallels between this line and the line in
12 question, the Eastside Community, you know, the
13 Woodinville Subdivision in that this line, the
14 Chicago Northwestern line would -- was intended to
15 serve an industrial park, which in effect, the
16 whole Bellevue area, the area of focus that's of
17 interest would become. So there's some ground,
18 some past experience in a similar scenario. It's
19 almost a template.

20 On the Wellsboro & Corning Railroad, I was
21 asked to take a look at that in terms of what are
22 the -- what is the traffic potential for this
23 railroad, is it worth investing into. It was
24 actually owned -- this is another one that was
25 owned by an industrial -- by a public body, an

1 industrial authority, and I went in to evaluate the
2 line, make a business case for it so folks would
3 know to make a bid, which they did, because I
4 identified the traffic, traffic sources.

5 They didn't end up getting the bid, but
6 that has proven to be an extremely successful line.
7 So my projections were right on. And so which one?
8 You said through 7 or 8?

9 Q. I was just looking at 2 through 6. You
10 talked about 2 already. That's probably enough. I
11 was just trying to get an idea.

12 Let me think. Maybe we'll stick with this
13 for a second. Looking at again Exhibit No. 2, past
14 professional experience, you have at Item 13, part
15 of Ph.D. was to examine the Port of Seattle traffic
16 potential. Does that relate to this line at all?

17 A. It turned out to relate to it. It wasn't
18 intended, but I discovered that in the process of
19 doing it because of the ports course that I took.
20 I carried it a bit further, and it's well-known in
21 the logistics industry that the big demand -- one
22 of the big demands today is for what are known as
23 inland ports. Inland ports are spiralling up
24 because there's congestion in the ports. There's a
25 lot of activity there that constricts the flow of

1 traffic.

2 And if you can get traffic out of there,
3 out of the port and have some of the ancillary
4 activities take place off-site, it improves the
5 competitiveness of the ports. It's what we
6 discussed earlier about containers and how do you
7 get containers back, how do you get good cycle
8 time, and how do you build traffic using domestic
9 containers.

10 And to the degree that you can make it
11 more attractive for shippers, in many cases, it's
12 the steamship lines and the freight forwarders that
13 make shipping decisions on behalf of the shippers.
14 If you make it less expensive for them and they're
15 able to present a competitive case to their
16 customer, you would have the traffic. And that's
17 why this portion of the line is very, very
18 important. That's what emerged out of this, what I
19 learned out of it.

20 Q. Now, I never went for my Ph.D., but going
21 for a J.D., it seemed that I had to put lots of
22 things in writing. When you did this examination,
23 was there a written analysis that you did?

24 A. I did. I did make -- here. I looked at
25 the scenario in the Seattle area, and what emerged

1 out of that was a business case for inland ports.
2 A question would be where -- what inland port --
3 where would you put an inland port? Well, it
4 wasn't hard to discover available parcels of land
5 for this that make the business case even stronger
6 for this. And so this is work I did in '12, in the
7 summer of '12 on the way to something else. This
8 is what I discovered.

9 Q. So was this document which -- maybe the
10 easiest thing is we can mark this as Exhibit 7.

11 (Whereupon, BEHR Deposition
12 Exhibit No. 7 was marked for
13 identification.)

14 BY MR. TOBIN:

15 Q. Just so I understand, this study was not
16 done at the behest of Mr. Engel. It was something
17 that you were doing for your own research?

18 A. Right. It was independent, and it was a
19 result of the course that I took at Antwerp. So we
20 were talking about port competitiveness, and that's
21 what I looked at after having learned what --
22 anyway, it was a good case to make.

23 Q. You mentioned inland ports on a couple of
24 occasions in response to Mr. Pilsk's questioning,
25 and then you referenced it here. You referenced it

1 in response to my question about the study.

2 I take it inland port is an operation that
3 works in conjunction with a water port?

4 A. It is. It is a terminal. It is sort of
5 an adjunct terminal that is fed by the port and
6 increases efficiency and throughput. And so to
7 make this case, in the context of how it might be
8 applicable to this line, I have here part of the
9 business case would have been the areas -- the
10 advantages that could be realized if there was an
11 intermodal yard, in effect, an inland port yard on
12 Eastside Community Rail. Pretty straightforward
13 because it would be served by rail going to
14 Snohomish and then from Snohomish would come down,
15 so you would eliminate all the trucks issues.

16 Q. If I could interject, when you say here,
17 what document are you looking at?

18 A. Oh, this is a listing of what the benefits
19 would be to an inland port specifically on this
20 line, what's the business case for that, what are
21 the different ancillary services that could be
22 performed, and what is the business opportunity
23 here.

24 Q. Now, I suppose we'll have to -- before I
25 mark this, I want to understand where these --

1 where the documents fit together. Is that part of
2 the port study?

3 A. It is not. It emerged as a result of
4 having done that, and this is what -- this is
5 what -- this is what was developed as a result of
6 the work, this work here.

7 Q. Developed by you?

8 A. Developed by me, yes.

9 MR. TOBIN: Well, I might as well mark it as
10 Exhibit 8 just to have it in there.

11 (Whereupon, BEHR Deposition
12 Exhibit No. 8 was marked for
13 identification.)

14 THE WITNESS: It further bolsters the business
15 case.

16 BY MR. TOBIN:

17 Q. So do you -- again, I don't want to go
18 through this study extensively in the deposition,
19 but is your conclusion as a result of this study
20 that Bellevue presents a strong inland port
21 opportunity?

22 A. It certainly does, and it adds
23 additional -- there's even a more compelling
24 business case based on what I discovered
25 independently from what Doug Engel has been

1 contexts in response to Mr. Pilsk's questions an
2 analogy of chicken and egg. Do I understand your
3 testimony to be that in order to have investors
4 actually write checks, they need the Service
5 Transportation Board to authorize the reactivation
6 rights to Ballard?

7 A. That would be important.

8 Q. You mentioned with respect to some of the
9 shippers that there were side tracks connecting to
10 various warehouses or to some shippers.

11 A. Yes.

12 Q. Are you aware in some instances that,
13 depending on the volume of traffic, railroads will
14 load directly on the main line in lieu of using a
15 side track?

16 A. Well, you could. I mean, it depends on
17 the need, but if -- that's not as desirable. It's
18 possible you can do that, and I can add this, too,
19 that alongside -- on the west side of the
20 right-of-way, an access road could be built where
21 you could actually do -- in fact, you could do
22 this. If you had an access road that was adjacent,
23 and I believe there is an access road adjacent to
24 the right-of-way, you could even load from there.
25 You could transload because there's sufficient

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CORRECTION

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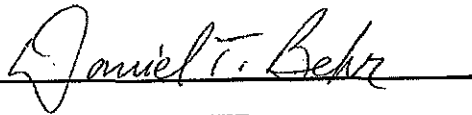
(over 7)

PAGE	LINE	CORRECTION
71	25	WHAT <u>CLASS</u> LEVEL OF TRACK
74	22	A LOT OF TRACK <u>DEVELOPING</u>
77	5	HELP <u>FIND</u> SOURCES OF CAPITAL
77	19	VALUE-ADD (NOT "ADDED")
80	14	SEEK INVESTMENT FROM FOREIGN NATIONALS
82	12	... QUESTION, THE EAST SIDE <u>COMMUNITY LINE</u> , YOU KNOW
15		... WHICH IS, IN EFFECT, ANALOGUE TO THE
16		WHOLE BELLEVUE AREA <u>SEGMENT</u> OF THE LINE
17		WHICH HAS BECOME AN AREA OF INTEREST & FOCUS
18		SO, THERE'S BEEN SOME <u>GROUNDING</u> , THROUGH
		SOME PAST EXPERIENCE IN A SIMILAR SCENARIO
85	1	... A BUSINESS CASE FOR <u>AN</u> <u>INLAND</u> <u>PORT</u>
86	22	... A BUSINESS OPPORTUNITY <u>IS</u> HERE
91	6	... BUT, YOU HAVE ALL THE TRACK <u>REQUIRED</u>
		TO DO THAT

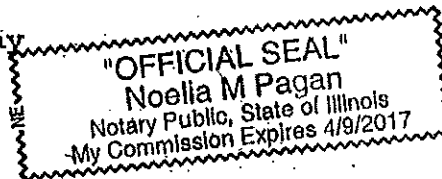
BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731)
BALLARD TERMINAL)
RAILROAD COMPANY, L.L.C.,)
- ACQUISITION AND EXEMPTION -)
WOODINVILLE SUBDIVISION)
STB DOCKET NO. AB-6 (SUB NO. 465X))
BNSF RAILWAY COMPANY)
- ABANDONMENT EXEMPTION -)
IN KING COUNTY, WA)

I, DANIEL BEHR, being first duly sworn, on
oath say that I am the deponent in the aforesaid
deposition taken on February 12, 2014; that I have
read the foregoing transcript of my deposition,
consisting of pages 1 through 95 inclusive, and
affix my signature to same.


DANIEL BEHR

Subscribed and sworn to
before me this 4th day
of March, 2014



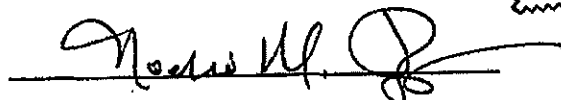
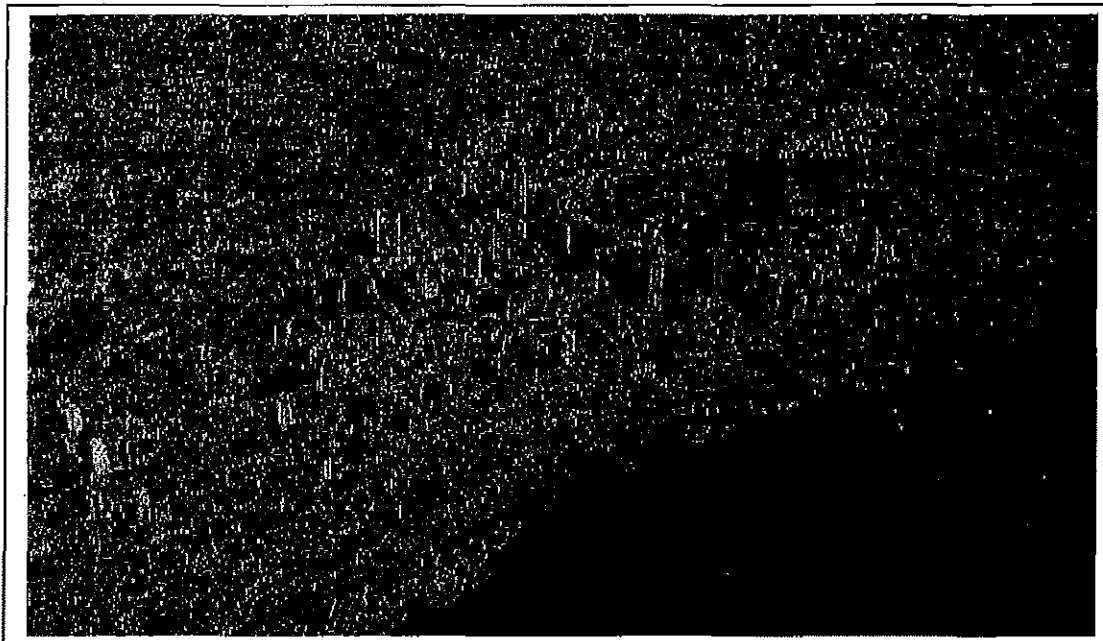

Notary Public

EXHIBIT 8

A More Competitive Port

Optimizing Environmental Cleanliness and Port Competitiveness



**Prepared in Conjunction with Port Economics and Business
Course conducted May, 2012 at the**

University of Antwerp

Antwerp, Belgium

And

TransPortNET

The University Network for Transport Education & Research

Prepared by:

**Daniel T. Behr
Chicago, Illinois
September, 2012**

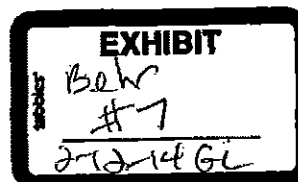


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Introduction

The Port of Seattle, an economic engine for the Puget Sound area, with high-paying transportation and logistics-related occupations, does not subscribe to the policy of charging fees on a per TEU basis for emissions, congestion, noise and other externalities, because they believe it will make them less competitive in the face of stiff competition from nearby Canadian ports in British Columbia, such as Prince Rupert and Vancouver, as well as the west coast ports of LA/Long Beach and Oakland, California. They believe this will be an increasingly more critical issue, as the Panama Canal expansion program, anticipated to be completed in 2014, will result in a larger number of all-water routings to the eastern and southeastern ports of the US. When those ports are able to accommodate the larger ships possible through the canal expansion, this will become an even more critical factor.

The genesis of this paper came from a presentation given by Dr. Genevieve Guilliano of the University of California at the Port Economics and Business course conducted by the University of Antwerp in May, 2012. Her presentation of *"Green Innovation Initiatives in Seaports: An Analysis of Best Practices"*, discussed the Port of Long Beach and Los Angeles' impact on the environment, potential solutions and progress made.

The original intention of this paper was to examine the Port of Seattle's situation, with respect to environmental impact, but in the course of research, the author discovered that their situation is quite different from that of the California ports. This resulted in a considerably broadened scope of view.

The purpose of this paper, therefore, then shifted to give a broad overview of the issues facing the Port of Seattle and understand the factors of its unique, competitive position. Once those factors were reviewed and understood, the author looked at possible alternatives to retain throughput transport efficiencies, through land zoning support, modal shift and/or operational efficiencies, without further sacrificing competitive position.

Another presentation from the course, *"Port Network Development and Actor Strategies"*, by Professor Thierry Vanellander of the University of Antwerp, influenced this paper on the topics of port competition, decision variables in choosing a port and especially the discussion of establishing hinterland ports to maintain competitiveness, along with course notes.

The paper is intended to be a wide survey, outlining the major challenges facing the Port of Seattle and offers general policy approaches to solving those problems and some suggestions, as to short-term remedies and longer term solutions, synthesized from the two presentations from the course.

Taking all the macro factors into account, is it possible to mitigate "dirty" truck emissions, without making the port uncompetitive by levying emission fees? Are truck emissions even a significant factor in air quality at or near the Port of Seattle? And, taking into account other negative impacts on the environment, such as congestion and noise, are there ways to make the port more competitive, yet also still mitigate noise, emissions and especially, traffic congestion?

Possible solutions are presented here.

The Local Geography and the Port of Seattle's Attributes

To begin, let us examine the transportation landscape around the Seattle-Tacoma area. To the north of the Seattle-Tacoma MSA (metropolitan statistical area), there is the Port of Everett and the Port of Bellingham, which is largely used by the U.S. Navy. In the middle of the region is the Port of Seattle and to the south, there is the Port of Tacoma. Further southwest is the Port of Olympia, which, although a deepwater port and has infrastructure, requires an additional day's sailing to access, rendering it uncompetitive, relative to the aforementioned ports. The rest of the harbors are relatively small.

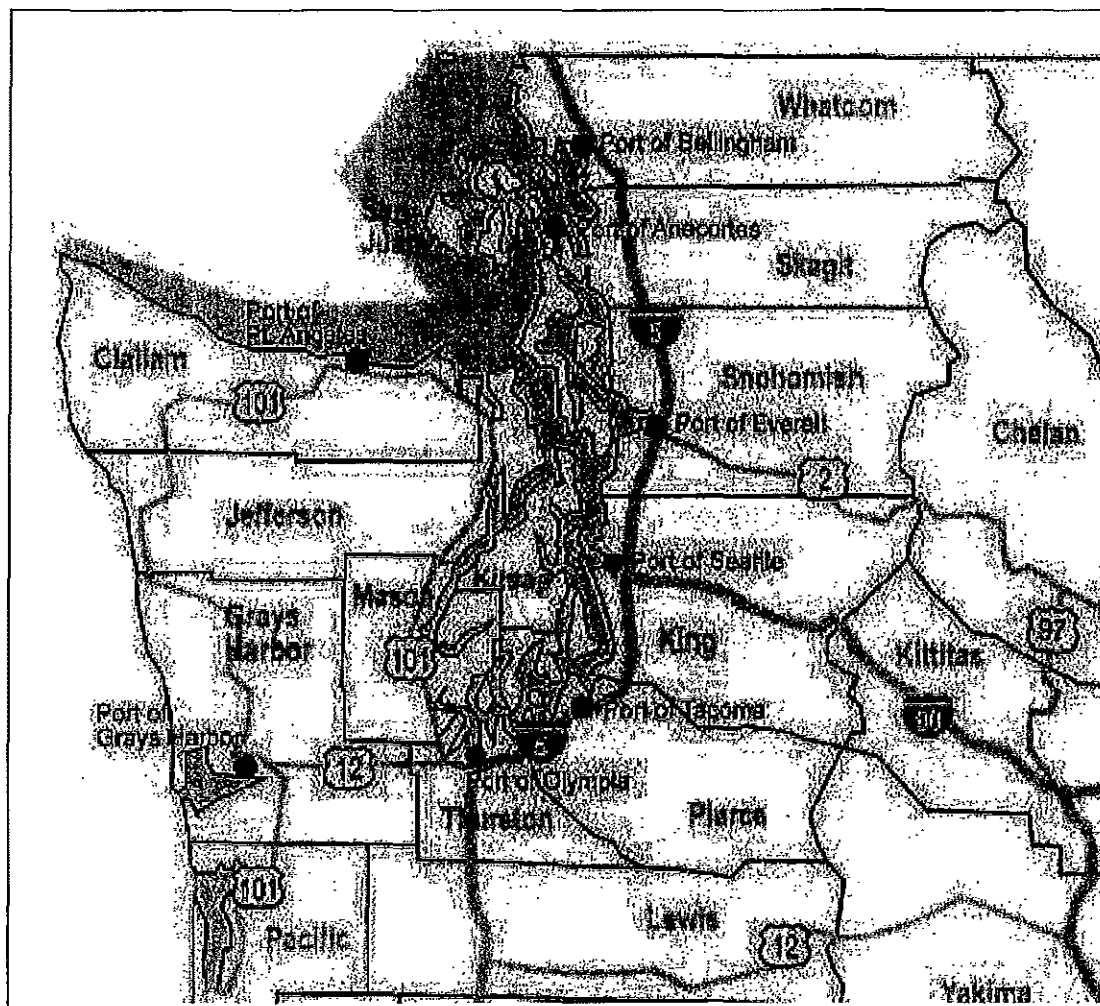
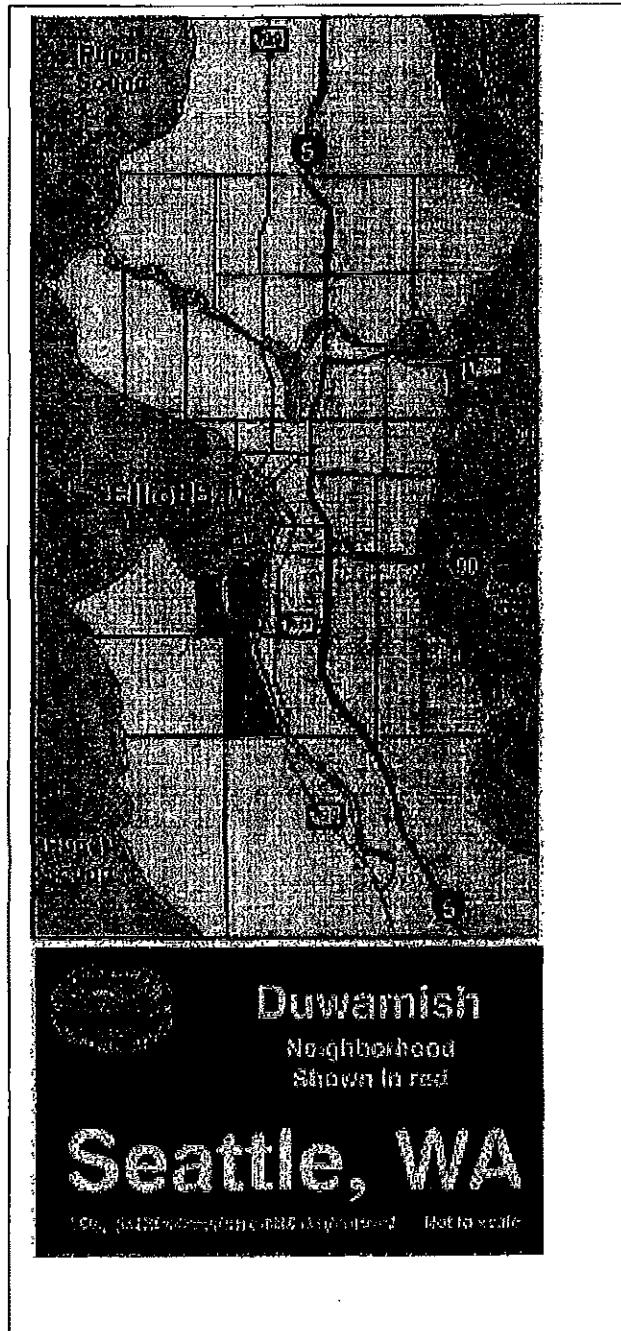


Figure 1 - Source: WSDOT - Freight - Washington State Ports Map

The Ports of Seattle, Tacoma, Olympia and Everett are served by three transport modes – rail, truck and short sea shipping. In this paper, the author will focus on the Port of Seattle and its exposure to the negative environmental consequences of its proximity to the dense central business district, as well as newly-built residential developments in the immediate area. In addition, the Port of Seattle competes with the nearby Port of Tacoma, only 33 miles (53 km) to the south.

Due to street configuration, the Port of Seattle not only has a high concentration of truck traffic, operating over a smaller number of streets for access to the port, creating congestion, the Port of Seattle has another problem that contributes to the congestion and throughput problems. That problem



is the redevelopment of land around the port for residential, retail and commercial purposes. This has further constrained expansion of port-related logistics operations and threatens the remaining supporting logistics service enterprises in the area, located in the Duwamish industrial area, immediately to the south of the port.

The resulting mix of non-port-related traffic with port-related traffic has led to further traffic congestion and interference problems. Further exacerbating the port traffic throughput problem is that the Port operates only one work shift, five days per week, from 0800 – 1600 hours.

In the Duwamish industrial area are domiciled, a number of logistics-related enterprises supporting the shippers, the steamship companies, railroads, as well as the Port itself.

Currently, there is conflict between pressures brought on by a public policy of maximizing tax revenue, developers that want to acquire low value land to convert to retail and residential uses and who oppose the need to ensure there is sufficient land available for enterprises supporting port activities. What might be done to mitigate these problems of distribution, zoning and still keep the port competitive?

In order to answer these questions, it is necessary to review factors that make a port competitive, addressed in the next section.

Figure 2 – Source: northwestplaces.com

What Makes a Port Competitive?

To put the problems into perspective, shippers and steamship lines will apply a number of criteria in their selection of ports. The most basic criteria are:

1) Location:

- a. What is the local market consumption (of goods imported), and access to that market, using local distribution centers and trans-loading facilities?
- b. What is the access to the inland (hinterland) ports for redistribution, with respect to the connections? Where are the inland ports located, relative to the service area of the port?

If a port's links to the inland ports or logistics enterprises are poor, then it's harder for a port to compete. Today, more than ever, it is necessary for shippers, logistics firms and carriers to coordinate their respective strategies within the supply chain.

2) The present state and history of the port operations, in terms of quality, reliability and quantity of container throughput:

- a. Are there strikes and blockages?
- b. Are the port hours sufficient to handle the traffic demands?
- c. What is the actual speed of operations within the port? Are transfers made quickly and reliably?
- d. What is the efficiency of customs and security? What is the speed of document processing? (This area is often a bottleneck).

All of the above relate to efficiency, which ultimately determines the throughput of containers.

3) Is the infrastructure sufficient to handle the traffic demands? Is there congestion? To the hinterlands? Locally, to logistics support enterprises? Both?

Infrastructure is linked to speed and time, which are constrained by congestion.

The Port of Seattle – Positives and Negatives

The Positives of the Port

The Port of Seattle enjoys a reasonably good infrastructure in the form of long quays, dense rail yards for car storage, staging and supply, good container storage and deep draft slips. It is also very close to two major north-south arteries, Interstate Highway I-5, extending from the Canadian to the Mexican border and State Route 99, both of which pass directly through the central business district of Seattle.

From the Washington Department of Transportation description, "State Route 99 rises above the southbound roadway at the south end of the Alaskan Way Viaduct to form a double-deck highway. The viaduct is an important freight and commercial vehicle route. It connects the Duwamish industrial core to Ballard / Interbay and north Seattle." Interstate Route 90 and State Route 520 are the major east-west arteries connecting logistics and warehousing centers in the region.

The Negatives of the Port

The primary shortcomings of the port are:

1. The difficulty of access to the port by truck traffic for both local drayage and pickup/delivery for other than local origins/destinations. The port suffers short access hours, with actual operating hours of 0800 – 1600 hrs and only five days a week. This results in substantial local congestion, as it is difficult to compress pickups and deliveries within this short time window. The narrow concentration of port access hours negatively affects the environment through emissions, heavy traffic congestion, noise, parking issues and long wait times for trucks. This impacts the quality of life of local residents, as well as the retail and commercial enterprises in the area, all of which compete for vehicle parking space and traffic capacity.
2. In addition, substantial tracts of land, previously used for support of logistics activity, have been sold for "higher and better uses", not only restricting the logistics support areas around the port, but extinguishing any possibility of new facilities being built to support, not only existing traffic to reduce congestion, but to accommodate future traffic growth.
3. Inconsistent planning and zoning policies, brought about by past, present (and possibly successor), political administrations, each with different philosophies, with respect to land use by enterprises that are not high tech, retail or commercial in nature. This translates into a city and regional public policy hostile to industrial and port-related uses, ultimately resulting in competitively disadvantaging the port in the marketplace, through policies disfavoring port activity.

Public Policy Discontinuity

The Port of Seattle is experiencing public policy conflicts. On one hand, there is the public policy response to the perceived (or real), environmental impact of the port and associated local activity, with respect to:

- Air quality
- Congestion
- Noise
- Land values; (and suppression thereof, resulting in lower property tax revenues, with port-related uses)
- Possible other land uses

On the other hand, the positive economic impact through a port's activities also needs to be weighed in balance, with respect to:

- Providing high wages for those playing integral and supporting roles within and without the port
- The goods and services provided through the movement and logistics services for imports
- The macroeconomic impacts of facilitating exports, adding to the State of Washington economy
- The goods and services provided through the movement and logistics services for exports

While beyond the scope of this paper, it is important to recognize and acknowledge the political forces at play, albeit intangible, but still formidable, in order to arrive at a solution that takes into account as many of the above factors, as possible. They are substantial drivers to policy decisions.

The Policy Conundrum

From a public policy perspective, the conundrum is how to balance both sets of interests. How can one balance the environmental and the economic?

How do a region's or city's policies affect the competitiveness and attractiveness of a port?

While there is a broad consensus regarding the negative environmental factors involving port operations, one does not want to cripple a port's competitiveness by over-regulating, especially if there is also considerable local consumption resulting from the high local wages paid through port-related jobs.

And, if a port is facilitating exports, one would not want to cripple that.

How to reconcile this?

The Current Situation

Breakdown of Enterprises/Functions Serving the Port

The Duwamish industrial area, located immediately to the south of the Port of Seattle is the domicile of a number of logistics-related enterprises supporting the shippers, the steamship companies, railroads and the Port itself. There are also warehousing and logistics firms largely concentrated in the areas to the south and southeast of the Port of Seattle, between it and the Port of Tacoma. Those same areas are to the northeast of the Port of Tacoma in the Kent, Tukwila, Kirkland, Bellevue and Issaquah areas.

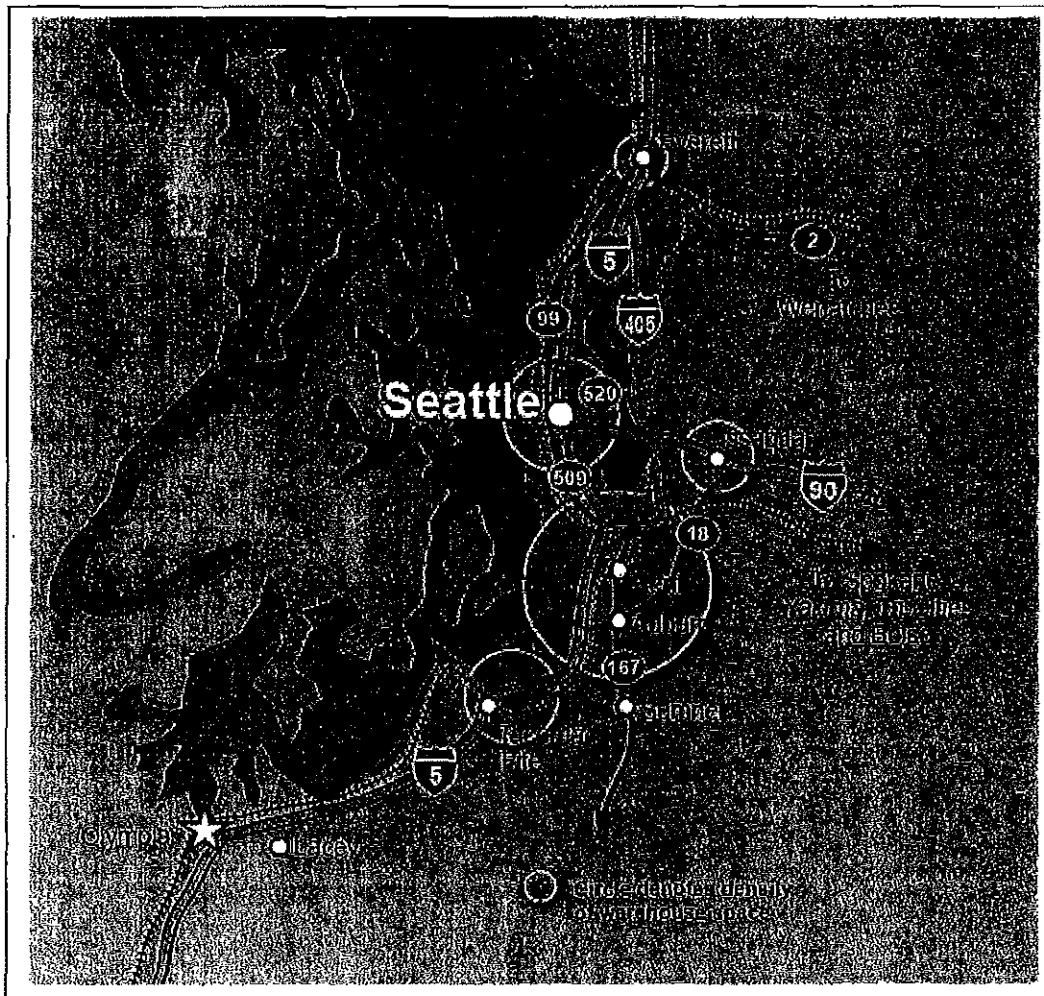


Figure 3 - Source: "Port of Seattle Keystone Project" Metrans 2011

These areas are somewhat equidistant to both ports and while they are outside of the immediate area of both ports, shipments still endure substantial congestion, resulting in delays and degraded shipping performance. The enterprises in the transportation, logistics and warehousing sector are so intertwined

that they are vertically and horizontally integrated within the broad sector. Freight forwarders are reliant on a number of other enterprises, whom they engage for support.

For example, in the case of export cargo, upon an order from a shipper, the freight forwarder will engage a warehousing firm (if they don't already own a warehouse(s)), to "pick an order" for transport. If it's a piece of export machinery, the correct container will be selected, depending upon whether the machinery is "in gauge" or "out of gauge" (over standard dimensions). If the shipment is over-dimension, the correct container will be selected. The shipment will then go to a rigger, if it's not already secured, prior to arriving to the port area, who will then ensure that the cargo is securely tied down within the container, using blocking and bracing. The material for this, generally wood of substantial weight and dimensions, is ordered from a local lumber firm, who will supply the "dunnage", as it is called, to the rigger. From there, a local transportation firm will "dray" (locally transfer) the load to the port for transfer to a vessel.

To get the shipment from the point of origin to the port area, a transport firm, such as a railroad, trucking firm and/or a short sea shipping line (especially if the cargo is to/from Alaska, in the case of Seattle), will be used.

Simultaneously, assuming the cargo is bound for an international destination, customs brokers will be engaged to sort through the customs, security and tax/duty documentation.

For an import shipment, a container will arrive at the port on a vessel, be unloaded and positioned for transfer, which will be to a truck, an intermodal railcar or a short sea shipping vessel, especially if it's going to Alaska.

If the cargo is not consigned to a local destination, it will be loaded onto an intermodal railcar, another ship or onto a chassis for pickup by a truck for the movement to its final destination.

If the cargo is destined for a local destination or the shipment must be broken up into smaller shipments bound for other destinations, the container is generally trucked to a local warehouse, generally operated by integrated logistics firms, for "destuffing" and "restuffing" into other containers. There are a number of local logistics firms engaged in "cross-docking", some served by both rail and truck and others by truck only.

And, aside from independent logistics firms, the competition between supply chains has led to integration of the above-mentioned functions, in many cases, handling internally, those functions that were handled by independent enterprises.

Regardless of whether these functions are handled by large, horizontally and vertically integrated logistics firms, large shippers, with their own in-house logistics capabilities or independent firms, they all result in substantial economic activity and employment, which is additive to the local, regional and State of Washington economy.

The point of this explanation is to illustrate the numerous different firms engaged in the logistics and transportation functions, generated by port traffic.

The Economic Value-Added Impact of the Port of Seattle.

A "value-add" of the Port of Seattle to society on a local, regional and State level is manifest. With the large volumes of traffic passing through Seattle, there are considerable positive economic and employment impacts. The Washington Department of Transportation estimates that employment generated from Port-related activity accounts for 6—10% of employment in the area. Through the multiplier effect, indirect jobs have a positive, amplified effect on the local, regional and State economy. In addition, exports from the State of Washington comprise a substantial portion of its economy.

The employment impact of the Port of Seattle consists of four basic categories:

1. Direct jobs, defined as employment directly generated through port activity, such as railroads, stevedores, longshoremen, warehouse workers, truckers, logistics firms, etc. The maritime jobs generated by cargo, fishing and cruise vessels also generate jobs through the services necessary to support the vessels, as well as other services, such as maritime attorneys, insurance brokers and suppliers for repair and supply services. Service and retail jobs associated with cruise ship passengers are also included in this category.
2. Induced jobs are generated by those enterprises and people, whose goods and services are required by those directly employed through Port of Seattle activity.
3. Indirect jobs are defined as those jobs generated by firms (not individuals), who are engaged providing goods and services to the maritime industry in the Port of Seattle.
4. Related user job impact is defined as those jobs through the Infrastructure support of the Port of Seattle activity, as well as the origins and destinations of products within Washington State.

However, in aggregate, jobs through State of Washington manufacturing, distribution and transportation are estimated to be 135,084 jobs, which are related to cargo movement within, to and from the Port of Seattle.

Jobs	Maritime Cargo	Fishing	Maritime	Cruise Ships	Total
Direct	11,411	1,307	1,413	1,955	26,086
Indirect	10,574	1,307	1,413	1,955	25,253
Induced	1,124	1,307	1,413	1,955	5,802
Total	23,109	3,921	4,739	5,865	37,634

Figure 4 – Data Source: "The 2007 Economic Impact of the Port of Seattle"

Total Economic Impact on the Port of Seattle Activity

In 2007, for cargo alone, this activity generated \$32.8 billion, which breaks down as follows:

- \$3.1 billion from firms providing goods and services associated with handling cargo in and out of the port, including transportation, as well as services to the vessels themselves
- \$29.7 billion represents the remainder, which includes the value of the aggregate output generated from enterprises in the State of Washington involved with the import and export of cargo going through the port. "This includes the value added at each stage of producing an export cargo, as well as the value added at each stage of production for the firms using imported raw materials and intermediate products that flow via the marine terminals in the Seattle Harbor and are consumed by industries within the state." (Source: "The 2007 Economic Impact of the Port of Seattle", Page 26)

Economic Impact of Employment Related to the Port of Seattle Activity

In 2007, there were 12,428 people directly employed through port-related occupations, defined as activity at the marine terminals. Their salaries positively impacted the regional economy through partial local re-spending of those salaries, translating into a multiplier, known as the "personal earnings multiplier effect". That multiplier was determined by the Port of Seattle to be 4.095. In aggregate, between direct, induced, indirect employment, the impact economic impact is estimated to be over \$4.1 billion. Figure 5 illustrates this.

Category	Jobs	Avg Salary	Aggregate Salaries	Multiplier	Total Effect
Direct	12,428	\$24,100	\$300,000,000	4.095	\$1,229,000,000
Indirect	1,243	\$24,100	\$30,000,000	4.095	\$122,900,000
Induced	1,243	\$24,100	\$30,000,000	4.095	\$122,900,000
Total	14,914				\$1,474,800,000

Figure 5 — Data Source: "The 2007 Economic Impact of the Port of Seattle"

Economic Impact of Tax Contributions Related to the Port of Seattle Activity

In 2007, the Port of Seattle marine terminal activity generates State and local taxes estimated to be in the amount of \$254.5 mm. Of that amount, \$89.8 mm was generated for the county and local area level and \$164.7 mm was generated for the State of Washington. Federal taxes have not been calculated here.

Current Policy Direction

There is a conflict between the pressures brought on by public policy of maximizing tax revenue, developers wanting to acquire low value land and convert it to non-port related commercial, retail and residential uses and the long term need to ensure there is sufficient land available for enterprises supporting port activities and future growth. The current policies favor commercial real estate developers, who, through their development practices, are shrinking the universe of available land for logistics and port-related activity.

The Implications of the Current Policy

The implications of this policy, if implemented, would have an enduring, long-term and negative effect on not only Seattle and the region, it would affect the economy of the State of Washington itself.

If the Port of Seattle becomes too congested and suffers from poor throughput, large shippers and steamship lines, unsatisfied, will simply turn to other ports.

If the port loses traffic volume, the effects will manifest in many ways. The following is a partial listing of the effects:

- Reduced port operations-related employment
- Reduced traffic and revenue for logistics support enterprises, such as warehousing and logistics firms, customs brokers, insurance firms, rigging companies, container repair and cleaning services, port related equipment repair firms (cranes, forklifts, chasses, etc.).
- Reduced demand for rail services, meaning a reduction of trains to serve the port, along with a reduction in the demand for operating and support crews for the trains
- Reduced demand for trucking services, both local and long distance
- Reduced volume of fuels, lubricants and chemicals required for operations
- Reduced demand for lumber for dunnage (blocking and bracing)

Potential Short Term Remedies and Long-Term Solutions

Part of the solution can be realized through changing approaches to the external impacts ports have on the region by working more closely with the logistics and transportation industry players, especially the SME firms, as they disproportionately provide the highest employment. In the context of sustaining employment growth, it would not be good policy to disadvantage them, in favor of larger corporations, as that would stifle growth, competition and innovation.

The following pages list the problems facing the Port of Seattle and possible solutions.

The Problem of Congestion

The core problem for the Port of Seattle is insufficient operating hours to match the capacity of its physical infrastructure. An international port operating from only eight hours, from 0800 to 1600 hours and for only five days per week is operating sub-optimally, by any standard.

Congestion Solution 1

The first solution is to add at least one more working shift to the port, whether they are sequential (0800 - 1600 and 1600 - 0000) or are overlapping shifts (0400 - 1200 and 1300 - 2100). The times that trucks can pickup and deliver to the port, as well as the port to conduct operations to facilitate drop-offs and pickups, must be extended. This will have the effect of spreading out the distribution of traffic load to everyone's benefit, as well as accommodate future growth.

This solution assumes that the port would be break-even or better on an operating income basis, which means that the financial risk is low.

The largest impediment to implementing this solution will be the ILCU (International Longshore and Warehouse Union). Their agenda is unknown. What is known is that the union jurisdiction covers all of the west coast ports and it is possible that they may have an agenda of emphasizing some ports over others. For example, if conditions at the Port of Long Beach offer a greater yield of potential union members, immediately and over a longer time span, it's very possible that the ILCU may actually seek to deemphasize the Port of Seattle, in favor of other ports. In addition, changes in labor conditions involve long, protracted and difficult negotiations with union leadership, whose continued leadership roles depend upon successful elections. Favorable internal election outcomes ensure the leadership's longevity and therefore, they would have relatively little incentive to change their successful formula for anything untried and untested.

There would have to be a concerted political commitment and effort, associated with a detailed financial analysis demonstrating the benefits to the union. Politically, it would also depend on timing, as such an initiative would have to begin shortly after a new election, to ensure that between election cycles, a success could be claimed by the incumbent for the next election campaign. This solution also assumes that the Mayor of Seattle and Governor of Washington also agree with this approach and that they are not too aligned with local developers and/or environmentalists, who may, themselves, be aligned with each other.

Parenthetically, the issue of increased noise, port activity and longer trucking hours makes further residential, commercial and retail development a self-solving issue. Short term, there will be considerable local neighborhood opposition and some expected political fallout, but eventually, developers and investors will come to realize that scarce land in the vicinity of the port designated for logistics activity will become less valuable for non-port uses and demand for the developer's purposes will fall.

That will mean more land will become available for port-related logistics activity, facilitating increased sector growth. In this way, the reduced land availability issue then becomes a self-solving problem, as those not intending the land to be used for non-port related reasons will soon look elsewhere to develop and residentially occupy, reducing the traffic load.

Congestion Solution 2

Capital investment to the port's infrastructure, in the form of more gates for entry and departure, RFID (Radio Frequency Identification), Optical Character Reading (OCR), Rubber-Tired Gantry Cranes (RTGs) could help efficiency. However, the fundamental problem remains, which is the finite number of streets and arterials for access to the port. These solutions, while helpful, would still not solve the problem of underutilization of the port, through the low number of operating hours.

Congestion Solution 3

Modal shift to rail for local pickup and delivery is potentially another solution to the congestion problem around the port. A prerequisite to this approach working is the existence of an "inland" port nearby, which is *not* at or near a competing port, such as Tacoma, Olympia or Everett. This inland (hinterland) port would originate and terminate port container traffic on railcars outside the port premises, avoiding truck congestion and emissions.

The basic concept is to establish dedicated, short, fast and frequent shuttle trains to and from the port to the inland port operated by separate traction companies, more than likely, logistics firms. The trains would operate over both publicly and privately owned railroads in the area to an inland port established not far away from the Port of Seattle. There are numerous sites within a 30 to 40 kilometer radius of the port that could serve this purpose.

Transport to the local inland port for redistribution (cross-docking) and stuffing-destuffing operations would take place at this facility for both local distribution and reloading into domestic containers for final delivery to the rest of the US markets, outside of the local Seattle area.

There are numerous advantages to this solution:

1. Sea containers loaded up to approximately 29 metric tons (65,000 lbs.), could be moved by rail to or from the port. The maximum container weight for transport by road is approximately 20 metric tons, although permits for more than 20 metric tons can be issued on a case-by-case basis, over certain, dedicated routes. In general, however, 20 metric tons is the limit by motor carrier.
2. After unloading, a supply of sea containers would remain in the facility to reload for export at a the higher weight limit, because the containers would be transported loaded from the facility by rail, not by road

3. The sea containers, if not reloaded, would still be in the immediate area of the port and shippers would not have to be charged for the return of the sea container, as this cost would normally be included in the shipping rate
4. "Double-stacking" containers on railcars would ease road capacity issues, part of the efficiency of shipping by rail
5. Container throughput within the port would be improved by loading the containers on railcars
6. It would be cost effective and require relatively little new infrastructure, other than additional, dedicated local tracks, access roads and gantry or straddle cranes
7. Shippers and steamship companies would appreciate the greater speed and throughput of containers, making the port more competitive, especially given the expansion of the Panama Canal in 2014
8. A difficult political issue of restricting land use around the port area for port-related activity would be solved, at least from an elected official's perspective. The official would not have to endure confrontations with angry environmentalists and withdrawn financial support from developers. (Although, this would still not solve the shrinking amount of land usable for port activities issue)
9. A difficult labor negotiation with the ILCU would be avoided, because the problem of congestion will have been partially solved by a greater volume of containers moved to and from the port, obviating that necessity
10. Class I carrier railroads (Union Pacific and the Burlington Northern Santa Fe), may realize greater volumes from the increased amount of containers being shipped from the inland port by rail, because the inland port will load and unload domestic containers to/from railcars on their dedicated terminal tracks
11. It would possibly spawn new or expanded enterprises within the inland port, so that the industry sector would enjoy a general boost through increased volume and activity

The negatives to this solution are:

1. Local and long-distance truckers will be adversely affected, since traffic volume will be shifted from road to rail
2. The Class I railroads (BNSF and UP), could object on the grounds that it may open the door to the concept of "open access", which is an anathema to the "closed access" system they want to maintain. To them, this would be an opening, allowing government to intrude further into their business domain
3. The Class I railroads (BNSF and UP), may object to the use of their railroads to possibly benefit a competing railroad operator and/or a former customer

4. The Class I railroads (BNSF and UP), would be dispatching trains operating over their territory and could make the local, shuttle trains operated by someone else, a very low priority for movement on their respective railroads, relative to the movement of their own trains, diminishing a time and cost advantage. Some form of premium incentive could potentially solve this problem. A formula would be negotiated with each carrier.
5. It may be difficult to find a suitable local site for the inland port
6. If there were a local site available and suitable for the inland port, there would likely be objections raised from the community, on the basis of increased congestion, noise, pollution, physical danger (large, fast moving trucks), dust and general industrial activity
7. Some local city administrations in the area would view this solution as curtailing their ability to enhance their tax base, favoring lower valued industrial property over higher value high-tech and professional office space, commercial, retail and residential development
8. Local and regional logistics firms would view this new facility as competition, if they chose not to or were not in a position to participate within the new inland port

Emissions Solution 1

Assuming there are no other solutions to solve the congestion problems, in order to reduce the emissions, some west coast ports, notably the Ports of Long Beach and Los Angeles have proposed a per container surcharge on shippers to reduce emissions, particularly from trucks.

Emissions Solution 2

Reduced port charge for trucks with better emissions could be a solution that does not penalize truckers who may not have the capital to expend on newer equipment. It is often better to reward targeted behavior with reduced costs, as opposed to increasing an industry participant's costs, who, in turn, will simply pass on those increased costs to everyone else along the value chain.

Aside from the prospect of imposing fees and making the Port of Seattle even less competitive than it is due to other reasons listed above, the actual *real* problem of truck emissions is quite small, in comparison to the California ports. Emissions from trucks account for only 3% of the total at the Port of Seattle, compared with 25% from trucks in the LA/Long Beach area ports, while ocean going vessels, are estimated to be responsible for 54% of the total emissions in the Port of Seattle. The remainder of emissions are generated by cargo handling equipment (32%), locomotives (12%) and less than 1% for fleet vehicles. (Source: 2011 Puget Sound Maritime Air Emissions Inventory Overview)

Penalizing trucking firms for a very small proportion of the total problem would be shortsighted and would not make a great stride toward solving the many other larger problems of the port.

Diminishing Land for Port Activity Use Solution

Land zoned for industrial and port activity use in the area of the Port of Seattle is diminishing, creating a long term problem for port growth. As the supply of land for port use diminishes, so do the prospects of longer term growth for the port and its supporting logistics enterprises. As more and more waterfront property is converted to residential, retail and commercial use, values go up and along with those increased values are increased taxes to the City of Seattle. Increased tax revenues are very addictive to public entities. In this political system, what matters most is reelection and general tranquility, equating to minimal political risk.

Recognizing the above, the real solution that is best for the long term of the port's viability is to impose zoning restrictions on any further land development for non-port related uses.

The negatives are that developers will be unlikely to financially support any candidate establishes policies counter to their interests. In addition, there are politically powerful environmental groups, taking various forms, from the Sierra Club and Greenpeace to local bicycle interests, who will oppose any efforts to retain port lands for port-related expansion activity, citing environmental and life quality issues.

Nevertheless, the best long term solution is to preserve land around the Port of Seattle for port-related use only.

A recap of this section may be found in the Appendix under the *"Matrix of Remedies and Solutions"* page.

Conclusions

The Port of Seattle is vulnerable to developing market forces, rendering it less competitive. Those forces are:

1. The expansion of the Panama Canal, allowing large vessels to transit the canal for an all-water route to the southeastern and eastern ports of the US, scheduled to be completed in 2014
2. Other ports on the west coast, including the nearby Port of Tacoma, have much longer operating hours, reducing the useful container throughput
3. Other ports on the west coast, including the nearby Port of Tacoma, have substantial amounts of developable land for both port expansion and port-related logistics enterprises
4. Other competing ports on the west coast, including the nearby Port of Tacoma, have relatively unconstrained traffic to the ports, with much longer operating hours
5. Other ports, other than LA/Long Beach, have friendlier municipal policies that support port activities and commerce

Examples of constructive policies for the Port of Seattle to implement and counter the negatives are:

1. Adopt zoning policies to preserve developable land for port related purposes. The enterprises engaged in activity related to the port must see a clear path to expansion or they will view their enterprises as contracting and seek other venues. Losing support enterprises will accelerate the downward spiral for the port, because shippers and steamship companies will have fewer options at higher costs, rendering the port ever more uncompetitive.
2. Do not adopt truck-unfriendly policies to discourage traffic to and from the port, especially through fees. The reality is that trucking is a primary transportation mode of goods moving to and from the port. It is likely to remain so, because the majority of origins and destinations are either not rail served and/or, for shippers, and for whatever reason, rail does not work for them.
3. Do not increase the charges for ancillary services, such as the recent (2011-12) 25% increase in crane fees. Every increment upward of TEU cost will make the Port of Seattle less competitive.
4. Do not charge fees to trucks under the pretext of emissions; they are a very small source (3%)
5. Arrange for longer operating hours of the Port of Seattle. While not easily solved, due to prospective difficult negotiations with the ILWU (International Longshore and Warehouse Union), the short operating hour schedule is a root cause of congestion, noise and emissions.
6. Consider developing hinterland (inland) ports in the region, especially to the east and north of Seattle, to help reduce truck traffic, congestion, noise and emissions
7. Consider additional truck gates for movement to and from the port, with enhanced technology, such as RFID, OCR, Rubber-Tired Gantry cranes (RTGs) and Vehicle & Cargo Inspection Stations

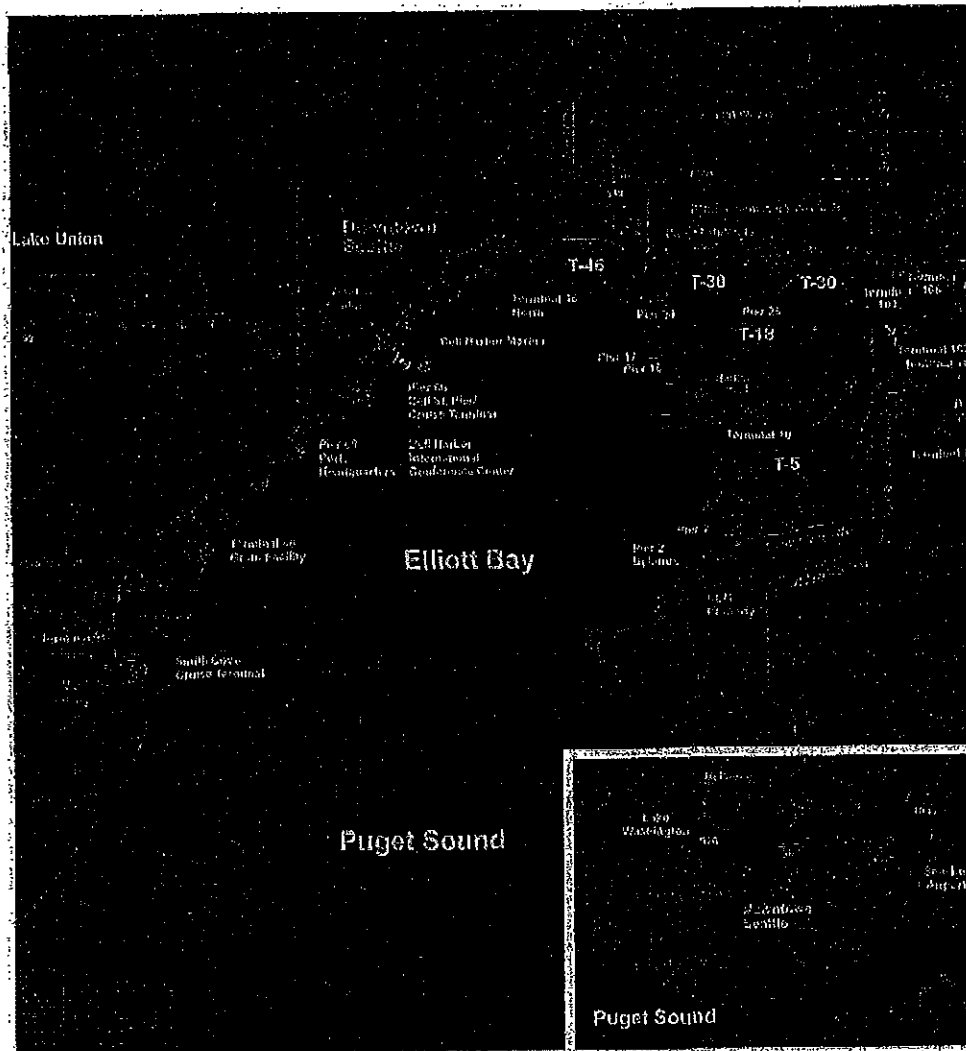
Appendix

Matrix of Remedies and Solutions

Potential Short Term Remedies and Long-Term Solutions
Matrix of Remedies and Solutions

Country	Capital	Area (sq. mi.)	Population	Government	Notes
Algeria	Algiers	92,000	10,000,000	Republic	Member of Arab League
Angola	Luanda	481,000	10,000,000	Republic	Member of OAU
Argentina	Buenos Aires	2,780,000	25,000,000	Republic	Member of OAS
Armenia	Yerevan	23,000	2,500,000	Republic	Member of CIS
Australia	Canberra	2,980,000	18,000,000	Constitutional Monarchy	Member of Commonwealth
Austria	Vienna	84,000	8,000,000	Republic	Member of EC
Azerbaijan	Baku	86,600	6,500,000	Republic	Member of CIS
Bahrain	Manama	600	1,000,000	Monarchy	Member of Arab League
Bangladesh	Dhaka	147,570	100,000,000	Republic	Member of OAU
Barbados	Bridgetown	166	250,000	Constitutional Monarchy	Member of Commonwealth
Belarus	Minsk	207,600	10,000,000	Republic	Member of CIS
Belgium	Brussels	30,528	10,000,000	Constitutional Monarchy	Member of EC
Belize	Belize City	22,967	250,000	Constitutional Monarchy	Member of Commonwealth
Benin	Cotonou	112,634	10,000,000	Republic	Member of OAU
Bhutan	Thimphu	38,394	2,500,000	Monarchy	Member of SAARC
Bolivia	Sucre	366,428	8,000,000	Republic	Member of OAS
Bosnia and Herzegovina	Sarajevo	51,129	4,500,000	Republic	Member of OAS
Brazil	Brasilia	8,511,965	150,000,000	Republic	Member of OAS
Bulgaria	Sofia	110,910	8,000,000	Republic	Member of EC
Burkina Faso	Ouagadougou	274,000	10,000,000	Republic	Member of OAU
Burundi	Gitega	27,834	5,000,000	Republic	Member of OAU
Cambodia	Phnom Penh	181,035	12,000,000	Monarchy	Member of ASEAN
Cameroon	Yaounde	475,339	15,000,000	Republic	Member of OAU
Canada	Ottawa	9,984,670	30,000,000	Constitutional Monarchy	Member of Commonwealth
Cape Verde	Praia	4,033	450,000	Republic	Member of OAU
Casakhstan	Nur-Sultan	1,799,600	17,000,000	Republic	Member of CIS
Catalonia	Barcelona	32,918	7,500,000	Autonomous Region	Member of EC
Cayman Islands	George Town	216	50,000	Territory	Member of Commonwealth
Czech Republic	Prague	78,867	10,500,000	Republic	Member of EC
Dominican Republic	Santiago	76,617	10,000,000	Republic	Member of OAS
Dominica	Roseau	751	70,000	Constitutional Monarchy	Member of Commonwealth
DRC	Kinshasa	2,344,858	60,000,000	Republic	Member of OAU
Ecuador	Quito	283,561	15,000,000	Republic	Member of OAS
Egypt	Cairo	1,001,450	70,000,000	Republic	Member of Arab League
El Salvador	San Salvador	21,340	5,000,000	Republic	Member of OAS
Equatorial Guinea	Malabo	28,051	1,000,000	Republic	Member of OAU
Eritrea	Asmara	122,360	3,500,000	Republic	Member of OAU
Estonia	Tallinn	45,248	1,300,000	Republic	Member of EC
Ethiopia	Addis Ababa	1,104,308	70,000,000	Republic	Member of OAU
Fiji	Suva	183,347	750,000	Constitutional Monarchy	Member of Commonwealth
Finland	Helsinki	130,385	5,000,000	Republic	Member of EC
France	Paris	643,801	65,000,000	Republic	Member of EC
Gabon	Libreville	267,667	1,500,000	Republic	Member of OAU
Gambia	Banjul	11,300	1,500,000	Republic	Member of OAU
Germany	Berlin	357,021	82,000,000	Republic	Member of EC
Ghana	Accra	238,533	20,000,000	Republic	Member of OAU
Greece	Athens	113,512	11,000,000	Republic	Member of EC
Greenland	Narsarsuaq	2,166,085	56,000	Territory	Member of Commonwealth
Grenada	St. George's	344	100,000	Constitutional Monarchy	Member of Commonwealth
Guatemala	Guatemala City	109,888	15,000,000	Republic	Member of OAS
Guinea	Conakry	245,833	10,000,000	Republic	Member of OAU
Guinea-Bissau	Bissau	14,125	1,500,000	Republic	Member of OAU
Haiti	Port-au-Prince	77,816	10,000,000	Republic	Member of OAS
Honduras	Tegucigalpa	112,492	6,000,000	Republic	Member of OAS
Hungary	Budapest	93,030	10,500,000	Republic	Member of EC
Iceland	Reykjavik	101,824	280,000	Republic	Member of EC
India	New Delhi	3,287,263	1,000,000,000	Republic	Member of SAARC
Indonesia	Jakarta	1,919,348	200,000,000	Republic	Member of ASEAN
Iran	Tehran	1,648,195	65,000,000	Republic	Member of OAS
Ireland	Dublin	70,273	4,000,000	Republic	Member of EC
Israel	Jerusalem	20,346	6,000,000	Republic	Member of Arab League
Italy	Rome	301,330	60,000,000	Republic	Member of EC
Jamaica	Kingston	10,991	2,500,000	Constitutional Monarchy	Member of Commonwealth
Japan	Tokyo	377,915	125,000,000	Constitutional Monarchy	Member of EC
Jordan	Amman	89,300	5,500,000	Monarchy	Member of Arab League
Kazakhstan	Nur-Sultan	1,799,600	17,000,000	Republic	Member of CIS

Port of Seattle Map View

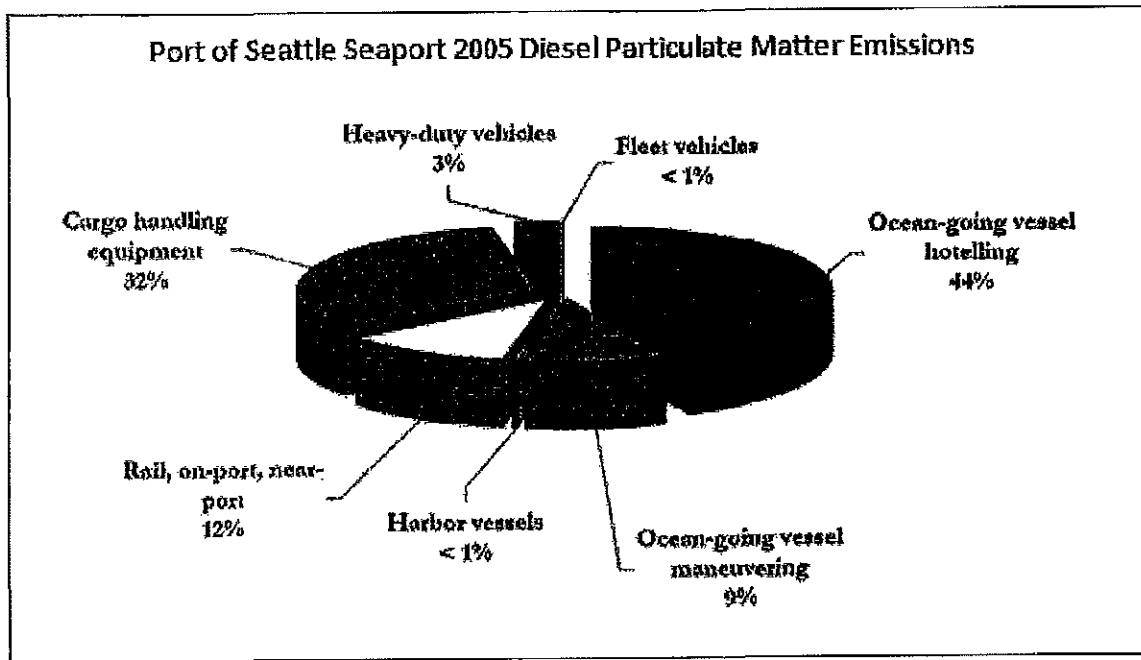


LEGEND OF MAP SYMBOLS

 Interstate	 Road/Local Road	 Freeway
 State Highway 99	 Public Shoreline Access & Parks	 Primary Road
		 Secondary Road
		 Railroad

Port of Seattle
Where a sustainable world is headed.

Port of Seattle 2005 - Diesel Particulate Matter Emissions Proportions



Source: 2011 Puget Sound Maritime Air Emissions Inventory Overview

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CONFIDENTIAL EXHIBIT 9

EXHIBIT 10

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731	)
BALLARD TERMINAL	)
RAILROAD COMPANY, L.L.C.	)
-ACQUISITION AND EXEMPTION-	)
WOODINVILLE SUBDIVISION	)
	)
STB DOCKET NO. AB-6 (SUB. NO. 465X)	)
BNSF RAILWAY COMPANY	)
-ABANDONMENT EXEMPTION-	)
IN KING COUNTY, WA	)
	)

Deposition Upon Oral Examination
of
GREG STARUP

Taken at 600 University, Suite 3600
Seattle, Washington

DATE: February 6, 2014

REPORTED BY: Wade J. Johnson, RPR
CCR No.: 2574

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1 in terms, that, without their ability to be able to use that
 2 corridor, it was unlikely that -- based upon what they were
 3 representing, that it could be viable. In other words, their
 4 plan contained the use of that corridor as a major part of
 5 the revenue generation.
 6 Q. Okay.
 7 A. And, again, it was so general, you know, very
 8 difficult to determine anything concrete, but, what could be
 9 determined is that a decision must be made, one way or the
 10 other. Now, if a decision were made in the negative, then
 11 that would mean that we would have to look at it in a totally
 12 different manner.
 13 Q. Okay. I am trying to understand what is it about
 14 the decision of the Board that would impact your ability to
 15 evaluate a request for financing to operate rail service.
 16 Can you expand on your earlier answer.
 17 A. It was clear that the application would contain
 18 projections of revenue that would be dependent upon being
 19 able to use that corridor. So, without a decision, there is
 20 no way to know if those projections were viable or not.
 21 Q. In your work with the bank -- and actually this is
 22 a perfect opportunity to ask you -- can you just explain sort
 23 of generally what it is you do at the bank.
 24 A. I am manager of the bank's Small Business
 25 Administration lending department. I work with other lenders

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1 within the bank to structure SBA loans. I'm part of credit
 2 administration, so that means that I have a certain approval
 3 authority as well as recommending authority.
 4 Q. Do you deal only with SBA loans?
 5 A. Almost exclusively at this point, yes. And USDA
 6 guaranteed, other government guaranteed loans.
 7 Q. Agricultural loans, that sort of thing?
 8 A. It could be, yeah.
 9 Q. The communications that you had with Mr. Engle, and
 10 we are going to get into those in more detail in a little
 11 while, were they always about an SBA loan?
 12 A. The assumption I believe is that because of the
 13 start-up nature of this venture, that it would have to be an
 14 SBA loan. And, before there was ever an application, there
 15 would have to be a number of things that occurred, one of
 16 which we felt was this.
 17 Q. Did you ever discuss any other type of financing
 18 with Mr. Engle or Ms. Cox?
 19 A. No.
 20 Q. So you never discussed having the bank provide
 21 equity financing?
 22 A. No. He may have asked, but, no.
 23 Q. Understood. So, when you evaluate an SBA loan or
 24 when you evaluate a request or when you are having a
 25 discussion with someone about an SBA loan, have you ever

Page 21

1 engaged in an analysis to either see if you could grant
 2 conditional approval for an SBA loan, in other words,
 3 approval for the loan conditioned upon some event or
 4 occurrence or some other criteria that would have to be met?
 5 MR. PASCHALIS: I will object to the form.
 6 A. Yes, I have granted conditional approvals.
 7 Generally, those conditions are of the nature such as
 8 verification of value, an appraisal, verification of some
 9 other thing, you know, title insurance, lien searches, things
 10 of that nature, generally fundamental issues, such as
 11 understanding what income stream are going to be needed for
 12 the application in order to evaluate the request.
 13 Q. Are you of the view that you would not have been
 14 able to engage in the type of analysis needed for conditional
 15 approval without a final decision of the Surface
 16 Transportation Board here?
 17 A. I would have to say yes. No, I would not be able
 18 to -- I could not envision any kind of provisional approval
 19 with such a fundamental question outstanding. Aside from the
 20 prudence of it, it's a matter of efficiency and time, as
 21 well. We would not go through the analysis procedure on such
 22 a speculative factor.
 23 Q. Apart from the prudence and the investment of time
 24 and other resources, in terms of the information that you
 25 would need to give conditional or preapproval -- by

Page 22

1 information, I mean information about the business itself,
 2 revenue stream; income; securitization; guarantee
 3 information -- is there anything about the absence of a
 4 Surface Transportation Board decision that would prevent you
 5 from analyzing that information?
 6 A. Well, I think it would be very difficult for the
 7 subject entity to be able to get into any kinds of
 8 conditional commitments of business, for example, arranging
 9 potential freight hauls, unless they did have some sort of
 10 authority.
 11 Q. What makes you think that would be difficult for --
 12 and let's keep it focused here on Ballard Terminal Railroad
 13 and ECR. What would make it difficult for them to be able to
 14 accurately represent those commitments or projections of rail
 15 traffic?
 16 MR. PASCHALIS: I will object to the extent
 17 that calls for speculation.
 18 Q. Well, you just said you think it would be difficult
 19 for them to get it.
 20 A. Yes, I do.
 21 Q. Why do you think that?
 22 A. Because I cannot imagine any business making any
 23 kind of a commitment when there may not be any real ability
 24 for them to be able to perform. I think that they have to
 25 have some sort of a chance of performing, and, without

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1 something like that.

2 Q. So, in order to extend a loan, you would require

3 the applicant to demonstrate that it has right in some way to

4 actually conduct its business on the property?

5 A. If revenues were --

6 MR. PASCHALIS: If I may, I will object to the

7 form, and I will object on the basis of asked and answered.

8 A. If revenues were considered from that particular

9 operation and those revenues were germane in the underwriting

10 of the loan, yes, it would be required, yeah. It just

11 depends on the nature of -- and that's where we were trying

12 to get to, trying to understand.

13 Q. Did Mr. Engle represent to you that he, either on

14 behalf of ECR or Ballard Terminal, was seeking financing to

15 reinstall the tracks in this purple area owned by the city of

16 Kirkland, on this map we are looking at, page 3 on

17 Exhibit 70?

18 A. There were a number of improvements that would have

19 to be made; I understood that, and I represented to him that

20 we would not be financing those improvements.

21 Q. Did you all talk dollar amounts about how big of a

22 loan Mr. Engle was seeking?

23 A. The statutory limit of an SBA loan is \$5 million.

24 That's the upper limit. So anything beyond that would be

25 beyond the scope of what we would be interested in doing.

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1 And, in fact, it would be somewhat dependent upon the size of

2 the company and the amount of equity that was injected into

3 the company.

4 Q. Can you speak more to that. What would be

5 required? Do you have any idea, or is it so highly

6 contextual that you cannot really speak to it?

7 A. It is very contextual, but, generally, 30 percent

8 equity in a start-up is not overly conservative.

9 Q. Did you and Mr. Engle ever talk numbers? Did you

10 have an impression about that he wanted to seek the full SBA

11 loan limit of 5 million?

12 A. No, we never really got to that point.

13 Q. Why not?

14 A. Why not? Because I still had questions about who

15 the borrower was going to be, what the borrowing would be

16 for, but, moreover, what is the ownership, and what was the

17 equity of the company. We never got there.

18 Q. So then, if the bank would not make a loan for the

19 purpose of reinstalling tracks, what would you consider

20 making the loan for?

21 A. Well, perhaps for real estate to construct a

22 terminal; perhaps for rolling stock.

23 Q. Would you be able to extend an SBA loan for the

24 purpose of acquiring an easement over the line between

25 Woodinville and Bellevue?

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1 MR. PASCHALIS: I will object to the extent

2 that that calls for legal conclusion.

3 A. We might be able to do that, but that -- financing

4 an intangible, that might be a use of an SBA loan, but we

5 would probably prefer that that be funded by equity.

6 Q. Would you extend a loan for that intangible

7 property if it couldn't be secured by a lien?

8 MR. PASCHALIS: I will object to the form and

9 to the extent it calls for legal conclusion.

10 A. I guess I don't think I could -- if there were

11 truly an easement, it could be secured with a lien, I mean,

12 it could be liened.

13 Q. Okay.

14 A. Yeah.

15 Q. All right.

16 A. The value of that is a different question.

17 Q. Based on the information that Mr. Engle has

18 provided to you, have you done any independent research or

19 analysis of the rail service plan he has described to you or

20 presented to you?

21 A. No.

22 Q. I would like to hand you a couple of previously

23 marked exhibits. These are 62 and 63. Just out of

24 curiosity, how big of a bank is Coastal Community Bank?

25 A. We're just over 4 million in assets at this point.

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1 Q. I don't have a good sense for where that puts the

2 bank in terms of the marketplace for banks. Does that mean

3 you are one of the largest banks in the state?

4 A. No.

5 Q. Medium-sized?

6 A. No.

7 Q. What then?

8 A. We're a community bank. In terms of branches, ten

9 branches. Perhaps that is more meaningful.

10 Q. Sure. Would you ever describe yourself as one of

11 the largest banks in the Northwest?

12 A. No.

13 Q. If you look at Exhibit 62, would you turn to

14 page 5. It is the pagination in the middle of the bottom

15 page. I want you to look at the first full paragraph,

16 beginning, "Also." It reads, "Also attached hereto is

17 correspondence from Coastal Community Bank and AmericanWest

18 Bank, the bankers for Ballard and Eastside Community Rail,

19 LLC, a significant project supporter. Each of those banks

20 stands ready, willing, and able to financially participate in

21 the restoration associated with the reactivation of the

22 subject rail line." I want to focus on that last sentence.

23 Is it accurate to say that Coastal Community Bank is ready,

24 willing, and able to financially participate in the

25 restoration associated with the reactivation of the line

Page 55	Page 57
STARUP/Marcuse 55 1 you testified earlier that Ballard Terminal Railroad is not 2 presently a customer of Coastal Community Bank; is that 3 correct? 4 A. That is correct. 5 Q. And Byron Cole is not a customer of Coastal 6 Community Bank? 7 A. I have no knowledge of that name. Without 8 searching the bank's records, I don't know if he is a 9 customer. 10 Q. To your knowledge, Paul Nerdrum is not a customer 11 of Coastal Community Bank? 12 A. Again, without searching, I have no positive 13 knowledge, but I do not believe that he is. 14 MR. MARCUSE: All right. Thank you. I have 15 no further questions at this time. 16 MR. WAGNER: Tom, before you go, there was one 17 handwritten document that I wanted to ask a question about. 18 It is going to be really fast. I just want to sort of go 19 over the handwriting. There is one handwritten sheet. Can 20 we mark this. 21 MR. FERGUSON: What is the folder marked as? 22 MR. WAGNER: "October 18th, 2013, handwritten 23 notes." 24 MR. PASCHALIS: Is that a part of any exhibits 25 that has been marked."	STARUP/Marcuse 57 1 section. 2 A. I can tell you what I think it means. 3 Q. Okay. 4 A. I think that, if he received a State approval -- 5 actually, I don't know what it means. I don't know what it 6 means. I am very perplexed. 7 Q. Were you aware that they were trying to get grant 8 money from the State? 9 A. That's what -- yes, that's -- I remember now, yes. 10 Q. Do you know how that would enhance their credit? 11 A. Well, there would be greater participation in the 12 project. 13 Q. Do you recall how much the State -- 14 A. No, I don't. 15 Q. Okay. Going down to the second section, about the 16 fourth and the third to the last lines, it says, "Right of 17 eminent domain"; do you see that? 18 A. Yes, I do. 19 Q. And below that is probably another abbreviation. 20 A. "Purchase, Kirkland and Woodinville." 21 Q. So, when you wrote that down, do you remember what 22 that meant? 23 A. Yeah. He was talking about -- and when I wrote 24 these notes, they were mainly just to clue me in on, in case 25 we went forward, that these were some things that I would
Page 56 STARUP/Marcuse 56 1 MR. WAGNER: No. 2 So let's mark that 82. 3 (Exhibit 82 marked for 4 identification.) 5 Q. Mr. Starup, are these notes -- 6 MR. PASCHALIS: Would you mind giving me a 7 moment to try to locate that. Okay, I see a photocopy of 8 lined paper. In the upper, left-hand corner it says 9 "10/18/13" underlined. Is that the one? 10 MR. FERGUSON: Yes. 11 MR. PASCHALIS: And that has No. 82. 12 Q. (By Mr. Wagner) Mr. Starup, do you recognize this 13 document? 14 A. Yes. That's my handwriting. 15 Q. Can you tell me what these notes were from. 16 A. They were from a conversation with Mr. Engle. 17 Q. And this was on 10/18/2013? 18 A. Yes. 19 Q. On about the fifth line it says -- I don't know 20 that second word. The first word is "State." 21 A. Abbreviation for approval, I believe, to enhance 22 credit. 23 Q. Okay, so can you tell me what that means? 24 A. No, I can't. 25 Q. That is fine. If we could go down to the next	Page 58 STARUP/Paschalis 58 1 need to investigate. And, as I recall, he was talking about 2 the fact that this was a reserve freight easement on the 3 Kirkland section, and it was federally controlled, and that 4 there would be some sort of right of eminent domain based 5 upon that, and that, you know, he had some sort of grand 6 scheme as to how he was going to be able to acquire rights. 7 And I am not an expert on rail financing, and so those were 8 kind of key things that I needed to remember so that, if it 9 went any further, I would be able to do further 10 investigation. 11 Q. You wrote "Right of eminent domain," here. So was 12 it your impression that Eastside -- what are they called 13 again? 14 A. Community Rail. 15 Q. -- Eastside Community Rail would be able to take 16 the property from the city of Kirkland and Woodinville? 17 A. Through some sort of process, yeah. That's kind of 18 the gist of what I was understanding. 19 MR. WAGNER: Thank you. 20 Tom? 21 MR. PASCHALIS: Sure. 22 23 EXAMINATION 24 BY MR. PASCHALIS: 25 Q. Mr. Starup, as I said, my name is Tom Paschalis,

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STARUP/Paschalis 59

1 and I represent Ballard Terminal Railroad Company and
 2 Eastside Community Rail. Just some housekeeping matters. If
 3 I ask you any questions that you are unclear on in any
 4 respect or that you would like me to rephrase, please let me
 5 know, and I would be happy to do so.
 6 A. I will do that. Thank you, Tom.
 7 Q. Just as a preliminary matter, since there has been
 8 some discussion about this, are you aware that the purpose of
 9 this STB proceeding is because Ballard is petitioning the
 10 Board for the reactivation rights to run rail service on the
 11 portion of the Eastside Corridor between Woodinville and
 12 Bellevue?
 13 A. I am aware of that.
 14 Q. There was some questions awhile back about whether
 15 or not it would concern you, the facts that Kirkland, Sound
 16 Transit, and King County own such rights currently; do you
 17 recall that conversation?
 18 MR. FERGUSON: Objection; mischaracterizes
 19 previous statements; mischaracterizes the actual allocation
 20 and holding of those rights.
 21 A. Can you restate the question.
 22 Q. Sure. You were asked earlier how it would affect
 23 and whether it would affect your evaluation of Ballard
 24 Terminal Railroad or Eastside Community Rail's application
 25 for a loan with the knowledge that King County, Kirkland, and

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STARUP/Paschalis 60

1 Sound Transit currently own reactivation rights to that
 2 segment of line.
 3 MR. FERGUSON: Same objections.
 4 A. Okay. And the question is: Do I understand that?
 5 Is that the question?
 6 Q. My first question is: Do you recall those
 7 questions that you received from Mr. Ferguson?
 8 A. Yes.
 9 Q. And, if the Board rules in Ballard's favor and
 10 Ballard thus has the reactivation rights and cures that
 11 situation, that would impact any application favorably,
 12 wouldn't it?
 13 A. Yes.
 14 Q. So, in other words, if Ballard owns the
 15 reactivation rights and has the right to reinstitute rail
 16 service on that line, there is no issue with whether anyone
 17 else owns it anymore, correct?
 18 A. Well, I don't know that.
 19 Q. Well, from your point of view.
 20 A. I can think of a myriad of possibilities that would
 21 still cause issues concerning ownership rights. But, if
 22 Ballard is granted reactivation rights, more than likely that
 23 will enhance any application, depending upon what that
 24 application is. I mean, that is speculation; I don't know
 25 what it is yet.

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STARUP/Paschalis 61

1 Q. Okay. Let's talk about Coastal Community Bank.
 2 You said earlier that you would consider it among the fastest
 3 growing banks in the Northwest?
 4 A. In the United States.
 5 Q. In the United States?
 6 A. Yes.
 7 Q. Even better. So why do you say that?
 8 A. Because we experienced 22 percent loan growth in
 9 2013 and nearly 25 percent in 2012.
 10 Q. How long has Coastal Community Bank been around?
 11 A. It was founded in 1997.
 12 Q. And when did you join?
 13 A. I joined in May of '11, yes.
 14 Q. Where were you before that?
 15 A. I was at First Heritage Bank.
 16 Q. And why did you choose to join Coastal Community?
 17 A. Because I recognized it to be an up-and-coming
 18 bank, many former colleagues of mine work there, and I was --
 19 and First Heritage Bank failed.
 20 Q. What do you mean by failed?
 21 A. Failed. It was seized by the FDIC.
 22 Q. Failed. Sure. Do you anticipate additional growth
 23 this year and in forthcoming years --
 24 A. Yes.
 25 Q. -- in your lending?

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STARUP/Paschalis 62

1 A. Yes.
 2 Q. Now, I would like to ask you a little to describe
 3 what an SBA loan is for those of us who are not bankers.
 4 A. An SBA loan is a business loan for improvement of
 5 businesses; start-up businesses; expansion of businesses. It
 6 is a loan that is funded by individual banks and guaranteed
 7 at a certain percentage by the United States Small Business
 8 Administration.
 9 Q. What percentage is that guarantee?
 10 A. It varies. A loan of this size would likely be
 11 guaranteed at 75 percent.
 12 Q. And, when you say of this size, does that mean
 13 5 million?
 14 A. Yes. From 150,000 to 5 million, generally, the
 15 guarantee is 75 percent.
 16 Q. What is the effect of that 75 percent guarantee;
 17 how does that play in your world?
 18 A. On a number of different levels. No. 1, that
 19 guaranteed portion does not count against the capital
 20 reserves of the bank, so that means that the bank can make a
 21 larger loan without having to reserve for it. It means that,
 22 if there is a default, after the bank goes through a
 23 collection and liquidation process, that the US SBA will
 24 guarantee the deficiency balance at 75 percent or whatever
 25 the guarantee amount is. So there's a certain amount of

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STARUP/Paschalis 67

1 A. It could also include intangible assets.

2 Q. And what do you mean by that?

3 A. I mean rights to operate; trademarks; those assets

4 that are not tangible, but that may have value; licenses to

5 operate.

6 Q. In terms of the tangible assets, would that include

7 things like land?

8 A. Yes.

9 Q. And railcars?

10 A. Yes.

11 Q. And rolling stock, like you said?

12 A. Yes.

13 Q. And perhaps track?

14 A. Yes.

15 Q. Now, you said, way back when, quite a while ago,

16 that in this particular instance you couldn't grant any kind

17 of conditional approval based on the circumstances of this

18 pending reactivation procedure; do you recall that?

19 A. Yes, I do recall that.

20 Q. And you also characterize it as an inefficient use

21 of time to even start any evaluation of a loan to Ballard or

22 Eastside while this STB proceeding is pending; do you recall

23 that?

24 A. Yes.

25 Q. So it is fair to say that, at this point in time,

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1 with the reactivation proceeding pending, Ballard cannot get

2 conditionally approved for any SBA loan through your bank?

3 MR. FERGUSON: Objection; mischaracterizes the

4 witness's testimony; mischaracterizes the facts established

5 by the witness's testimony.

6 A. Could you repeat the question again.

7 MR. PASCHALIS: Can I ask the court reporter

8 to do that, please.

9 (The previous question was

10 read back.)

11 A. I will say that it is highly unlikely. I would

12 have to say, since I am making the decisions, that is

13 correct. I make that decision that we are not going to do an

14 SBA loan for them until they get conditional approval, or

15 not. If they do not get conditional approval that will

16 satisfy a major question. We will look at it a whole lot

17 differently then.

18 Q. And, in any event, the point is that the evaluation

19 will begin after this STB proceeding occurs, correct, and is

20 resolved?

21 A. And after the appropriate documents have been

22 submitted to me for application.

23 Q. Sure. Now, with respect to the application itself,

24 I am just curious, because you indicated that it would be an

25 inefficient use of time to start evaluating any loan for

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1 Eastside at this time, is the same true for obtaining the

2 application documents that are outlined on the first page of

3 Exhibit 68?

4 A. I am not sure I understand.

5 MR. FERGUSON: Objection; vague; calls for

6 speculation.

7 A. I don't understand the question.

8 Q. Would you start looking and evaluating any

9 application documents submitted to you on behalf of Ballard

10 or Eastside while the STB proceeding is still pending, or

11 would it be more appropriate to wait until after the Board

12 has ruled?

13 MR. FERGUSON: Same objections.

14 A. I am going to kind of think out loud here. If I

15 got financial information on the principals of the company, I

16 might do some evaluation of them. I might do some evaluation

17 on the company's balance sheet in terms of -- but, without

18 some sort of concrete proposal, I don't really have anywhere

19 to go with it. And so that evaluation then is as of a

20 particular point in time; once the decision occurs, it will

21 be a different time, and I would probably have to do it all

22 over again. So I might look at it, but I am not going to

23 really do any hard evaluation until we have a pathway to go

24 forward, some sort of a concrete request. And, without that

25 decision, there is really no way to have a concrete request.

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1 Q. Okay. So it is fair to say that you wouldn't do a

2 full review of the application documents submitted to you

3 until the Board rules anyway?

4 MR. FERGUSON: Objection; vague.

5 A. That is correct.

6 Q. You had mentioned when you were discussing some of

7 the communications between yourself and Doug Engle that there

8 was a lot of verbal discussions; is that accurate?

9 A. A fair number of verbal discussions; perhaps not as

10 many as we would have had we had a real application.

11 Q. Sure. Let me try to ask a better question. So

12 with respect to what he was trying to accomplish with this

13 loan, you guys communicated, in large part, verbally; is that

14 accurate to say?

15 A. Yes. However, I would clarify something. We don't

16 have a loan application. When you say this loan, there is no

17 loan, there is no application.

18 Q. Thank you. Okay, I will rephrase appropriately.

19 In any event, in your discussions with him, you said he had

20 showed you some charts, and you had indicated that charts can

21 be somewhat meaningless, and you prefer numerical

22 projections; do you recall that?

23 A. Yes, I did.

24 Q. And that is an accurate paraphrasing of your

25 testimony?

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STARUP/Paschalis 75 [END OF CONFIDENTIAL DESIGNATION]	STARUP/Paschalis 77 1 however, if, quite frankly, that were the case, we would just 2 ask that they not be an applicant or not be associated with 3 the company, and, if that were possible, then maybe the 4 application moves forward. But, generally speaking, the 5 inclusion of an existing company with a good track record is 6 more than likely going to help an application for a new 7 start-up. 8 Q. If you were aware that there are accurate 9 projections for railcar traffic in the thousands per year on 10 any future Ballard or Eastside loan application, would that 11 not make the application more likely to be approved? 12 A. It's going to be information that's probably going 13 to be positive, yeah. 14 Q. If, as you discussed with Mr. Engle, that there 15 were excursion train or winery train businesses actively 16 operating on the line, would that improve the prospects of 17 any forthcoming loan application? 18 A. I'm not sure I understood the question. Can you 19 ask it again. 20 Q. Sure. If there are any companies that would be 21 running excursion trains or winery trains on the Eastside 22 Rail Corridor, would that fact improve Ballard or Eastside's 23 ability to have a loan approved by Coastal Community Bank? 24 A. If there were competing lines? I still don't 25 understand what you're getting at. Historically, if there
Page 76	Page 78
STARUP/Paschalis 76 1 Q. So the only question I have: It is fair to say 2 that Mr. Engle has endeavored to provide you with some 3 projections, but you, at the right time, would ask for 4 further numbers and further clarification as you get further 5 along in the application and evaluation process? 6 A. That is correct. 7 Q. Now, you mentioned in your discussion with 8 Mr. Ferguson that loaning to start-up companies involves a 9 little bit more risk; do you recall that? 10 A. Yes. 11 Q. And that is an accurate statement? 12 A. Yes, it is. 13 Q. Would it be beneficial for an entity attempting to 14 procure an SBA loan to have partnered with a business in the 15 same industry which has operated for 15 years? 16 A. Yes, more than likely; not necessarily, but more 17 than likely. 18 Q. It would likely improve their chances of getting a 19 loan? 20 A. It certainly may. 21 Q. And would that fact reduce the prospects of getting 22 a loan in any way? 23 A. I suppose it could. I guess it depends on the 24 strength of the existing company; what participation that 25 company has. It is possible that it could be a detriment;	STARUP/Paschalis 78 1 had been? 2 Q. No. Let me clarify, sir. If they were operating 3 in a partnership to some extent with Eastside and Ballard. 4 A. Quite possibly that would enhance the application. 5 I can see that there is that possibility it would enhance the 6 application. 7 Q. I believe you testified earlier that you saw some 8 potential benefit to Snohomish County posed by the 9 reactivation of rail service on the Eastside Corridor; do you 10 recall that? 11 A. Yes, I did. 12 Q. Is that something that you take into account? 13 A. Certainly, not as part of the credit decision, but 14 maybe as far as -- we as bankers view our role to be involved 15 in community development. It is certainly appropriate for us 16 to support projects that will enhance community development. 17 That eventually results in more business for us, but, 18 certainly, not at the expense of credit quality. So we may 19 work hard on an application to try to get it to be 20 creditworthy; whereas, for a project that we did not deem to 21 be enhancing community development, we may not be as involved 22 pre-application. In other words, like in this instance, 23 being involved with trying to help the applicant structure a 24 proposal that is going to be bankable. If it were not deemed 25 to be of value, then we probably would just say, well, when

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1 you get to where you need to be, you can apply, and we will

2 say yea or nay.

3 Q. So, to the extent that the impact on a local

4 community is taken into account, the prospect for economic

5 growth or a positive economic impact would be a favorable

6 thing, correct?

7 A. Yes, that's correct. It's the same reason we're

8 involved in the Economic Alliance of Snohomish County,

9 chambers of commerce, that sort of thing.

10 Q. And would the positive support of counties and

11 municipalities also have a positive effect on a loan

12 application with potential community benefits?

13 A. Would the support of the governments?

14 Q. Correct.

15 A. Yes.

16 Q. Either you or Mr. Ferguson had referenced some

17 communications between you and him or between your bank and

18 his office. I just want to ask you when you were first

19 contacted by anyone, whether a lawyer or otherwise, from the

20 city of Kirkland, King County, or Sound Transit?

21 A. I was first contacted via fax by Stoel Rives, in

22 that they were submitting a request -- I'm not sure of the

23 terminology, so forgive me -- I think it was a request for a

24 subpoena, a request for information. And at that point I

25 gathered up everything that I had hard copy and all of the

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1 e-mails that I had access to and notified our operations

2 department that we would be getting a request for the

3 information so that we could be prepared. I think that the

4 first voice communication with Mr. Ferguson was -- I believe

5 it was -- was it yesterday or the day before yesterday, we

6 arranged a time to talk? Was that correct? Then we spoke

7 for probably 35 minutes yesterday. Was it yesterday or

8 Tuesday?

9 MR. FERGUSON: I can't answer.

10 THE WITNESS: You can't answer?

11 MR. FERGUSON: No.

12 A. Okay. Sometime this week Mr. Ferguson and I had an

13 approximately 35-, 40-minute conversation with the intent of

14 establishing if this event or this function could be handled

15 with a declaration instead of a deposition, and so that's the

16 extent of it.

17 Q. In between the fax request for information that you

18 got and your 35-, 40-minute telephone conversation with

19 Mr. Ferguson earlier this week, did you have any other

20 communications?

21 A. Oh, yes, a variety of -- let's see, I think I got

22 faxes and post, you know, hard copy, through U.S. Mail, and I

23 don't think any by personal service.

24 Q. And what were those faxes and mailings with regards

25 to?

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1 A. Again, forgive me for not knowing the terminology.

2 A request for subpoena. I think we did get a subpoena. Did

3 we? In any case, it all had to do with -- you were served,

4 too, with the same information, so you have all of it.

5 Q. So the only thing that was conveyed in those

6 communications were legal documents?

7 A. Yes.

8 Q. Is that accurate to say?

9 A. That's correct.

10 Q. Okay. Tell me about what you discussed with

11 Mr. Ferguson for 35 or 40 minutes with respect to this

12 deposition or the declaration that was proposed.

13 A. We did not talk about anything that has not been

14 discussed today. The communication focused primarily on the

15 letter and the intent of the letter and the potential

16 application for a loan. So we did not talk about anything

17 that has not been discussed today in much more complete form.

18 Q. Sure. So he asked you what was your intention in

19 writing the letter to Cynthia Brown?

20 A. Yeah.

21 Q. What did he ask you with respect to the loan?

22 A. Oh, we discussed the checklist of items for the SBA

23 application, as I recall.

24 Q. Who proposed having a declaration as something that

25 might be offered?

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1 A. Mr. Ferguson suggested that that might be possible,

2 but he needed to have a short conversation. I think, after

3 we got through the bulk of the conversation, he felt that it

4 was necessary to have a full deposition.

5 Q. Did you discuss what the proposed declaration would

6 say?

7 A. No.

8 Q. Other than what you have testified to thus far, did

9 you discuss anything else during that 40 minutes, 35- to

10 40-minute telephone conversation?

11 A. No. As I previously stated, there is nothing in

12 that conversation that has not been discussed today.

13 Q. Then, after that conversation, have you had any

14 further communications with Mr. Ferguson or anyone else from

15 any of the other parties that are represented in that room

16 with you today?

17 A. No. I think you were called within two or

18 three minutes of my arrival here. I think I was asked if I

19 wanted coffee.

20 Q. In your past experience in banking, have you ever

21 had any other bank customers -- and this is with respect to

22 any bank -- come in and ask for a letter for the purposes of

23 assisting a transaction through the agreement process?

24 A. Yes.

25 Q. And, in other occasions, you have, I presume,

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STARUP/Paschalis 83 1 drafted letters for that purpose? 2 A. Yes. And it is not uncommon for a customer to 3 provide suggested language for that. I guess the supposition 4 there is they know the nature of the case and what 5 information is needed. But in every case I would have to say 6 that there is usually some alteration of that. 7 Q. And when that happens, you personally involve 8 yourself in the writing and editing of the letter to make 9 sure you are comfortable with the language, correct? 10 A. Absolutely. 11 Q. And that the language is accurate? 12 A. Yes. 13 Q. And then you sign? 14 A. Yes. 15 MR. PASCHALIS: Let's go off the record for a 16 brief break. I might have one or two for you, Mr. Starup, 17 and I just want to take a look at some documents first. 18 THE WITNESS: Okay. 19 (A brief recess was taken.) 20 MR. FERGUSON: Tom, are you ready? 21 MR. PASCHALIS: Yes. Let's go back on. 22 As it stands Mr. Starup, I have no further 23 questions for you at this time. 24 THE WITNESS: Very good. 25 MR. PASCHALIS: But someone else might.	1 A. That's correct, not a customer. 2 Q. You testified earlier that you have written letters 3 of support for other customers in the past, and they 4 sometimes give you text, and then you adjust it and then sign 5 the letter? 6 A. Yes. 7 Q. What prompted you to write a letter of support for 8 a person or an entity that is not currently a customer? 9 A. They are a potential client, and it may have 10 economic benefit to the areas in which we serve. 11 MR. MARCUSE: I have no further questions. 12 MR. PASCHALIS: Hunter? 13 14 EXAMINATION 15 BY MR. FERGUSON: 16 Q. There was some discussion earlier during 17 Mr. Paschalis's questioning about whether the provision of 18 collateral would enhance a loan application; do you recall 19 those questions? 20 A. Yes. 21 Q. Has Mr. Engle presented to you any information 22 about what potentially would be collateral for an SBA 23 application to Coastal Community Bank? 24 A. No, because we have not reached a concrete loan 25 proposal. Typically, for a -- an asset that is acquired with
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STARUP/Marcuse 84 1 EXAMINATION 2 BY MR. MARCUSE: 3 Q. Andrew Marcuse. I have one follow-up question, 4 maybe two. When you were speaking with Mr. Paschalis and he 5 was asking you about the various factors you would consider 6 in looking at an application, he asked you if the STB's 7 decision on a rail reactivation right might influence that 8 process favorably or otherwise; is that correct, you guys had 9 that colloquy? 10 A. Yes. 11 Q. Are you familiar with this thing that we have 12 called a rail reactivation, right? 13 A. I am somewhat familiar with it. I do not claim to 14 know any of the intricacies of it. I realize it would have a 15 significant impact to a potential client. 16 Q. My second question was: Is Doug Engle a current 17 customer of Coastal Community Bank? 18 A. No. 19 MR. PASCHALIS: That has been asked and 20 answered. 21 MR. MARCUSE: I am sorry if I have forgotten. 22 MR. PASCHALIS: Fair enough. I am just 23 stating it. 24 Q. And Eastside Community Rail is also then not a 25 current customer of Coastal Community Bank?	1 loan proceeds will always be considered to be collateral or 2 will always be taken as collateral. In addition, if the 3 value is insufficient on a margin basis, which the bank 4 determines, additional collateral may be sought and in most 5 cases is. 6 Q. Okay. Your decision to hold off on evaluating any 7 loan application as part of an effort to reactivate rail 8 service, is that based on any law or federal regulation 9 governing SBA loans? 10 A. No. 11 Q. Is it based on any bank policy? Is there a policy 12 that explicitly proscribes the -- 13 A. Not explicitly. 14 Q. Let me finish the question so we know what we are 15 not being explicit about. Is there a bank policy that 16 explicitly proscribes you from considering a business plan or 17 application here without a favorable decision for Ballard 18 from the STB? 19 A. Okay. State the question again. 20 Q. Sure. 21 MR. FERGUSON: Actually, can you just read it 22 back. No, let me rephrase, because I will try to simplify it 23 here. 24 Q. Is there a bank policy that explicitly proscribes 25 you from reviewing all the information you otherwise would

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1 about, the day he wins the lottery, doesn't have to go to
 2 work anymore, is that we've got options to consider, and when
 3 I say we, I do mean we. Ballard has got options, Eastside
 4 has got option, WATCO has got options, and we'll want to talk
 5 about what's best for the railroad.
 6 Q. I want to come back to this question about the
 7 options, this issue you raised about the options, but I first
 8 want to find out, when you say you spoke with Byron Saturday,
 9 I first want to know -- look at the top of this e-mail here.
 10 It says "Tuesday, November 26th." Do you have any reason to
 11 doubt that that is the date on which you sent this e-mail?
 12 A. I have no reason to doubt that.
 13 Q. So is this in reference to a conversation that took
 14 place the Saturday before Tuesday, November 26th?
 15 A. I would have to look at my calendar and know if it
 16 was that Saturday or the preceding Saturday. I don't recall.
 17 Q. Do you recall the conversation?
 18 A. With Byron?
 19 Q. Yes.
 20 A. Absolutely.
 21 Q. Can you describe that for us. Start off by, was it
 22 in person?
 23 A. It was in person. It was at the Denny's down on
 24 Fourth, near -- isn't there a Pink Elephant Car Wash or
 25 something down there? Anyway, down that way. It's an easy

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1 place for him to get from West Seattle and me to get off
 2 I-90. So that's his spot; we meet there.
 3 Q. Okay. So we are talking about a Denny's or some
 4 other restaurant --
 5 A. A Denny's.
 6 Q. -- there in the Denny Regrade in downtown Seattle?
 7 A. Yep.
 8 Q. In the morning?
 9 A. Of course.
 10 Q. All right. You had breakfast?
 11 A. Of course.
 12 Q. All right. What did you all talk about?
 13 A. I am sure what we talked about was current status
 14 of things going on in general.
 15 Q. What do you mean by that?
 16 A. The Maltby crossing. How are we doing on getting
 17 Snohomish County at that point to get their barriers up.
 18 Q. So you were talking about railroad operations?
 19 A. We're talking about railroad operations; we're
 20 talking about what's happening in the case; we're talking
 21 about what's going to happen after Byron retires, because he
 22 is not Ballard Terminal Railroad. He is the general manager,
 23 but he is not Ballard Terminal. And so what's he doing, and,
 24 jeez, he's been out on the lobster boat again. There's some
 25 personal aspects and there's some business aspects.

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1 Q. Has Mr. Cole told you when he plans to retire?
 2 A. It depends upon the week.
 3 Q. When you had this conversation the Saturday before
 4 or two Saturdays before November 26th, did he say he was
 5 going to retire at a particular time?
 6 A. No.
 7 Q. Did he have a time frame in mind?
 8 A. No.
 9 Q. Did he even say at that point that he was going to
 10 retire?
 11 A. Yes.
 12 Q. But he didn't say when?
 13 A. Didn't say when.
 14 Q. All right. What did you and Mr. Cole discuss
 15 specifically about WATCO?
 16 A. We have had --
 17 Q. At that meeting at the Denny's.
 18 A. I am confident that I introduced the concept of
 19 WATCO coming in and being there to handle larger trains, and
 20 I've kind of drawn the limit saying, as we phase into this
 21 relationship, ten cars or more would be handled by WATCO, and
 22 less than that would be handled by Ballard.
 23 Q. So stop right there. I think I understand what you
 24 are saying, but I am not sure. When you say ten cars or more
 25 would be handled by WATCO, what are you referring to?

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1 A. Moving ten cars or more on the line at a time as a
 2 consist, as it's called. So moving ten cars or more would be
 3 the responsibility of WATCO personnel, and less than that, as
 4 we're currently doing, half a dozen or something, would
 5 continue to be handled by Ballard.
 6 Q. Okay. So, as an example, and this is just a
 7 hypothetical here, Spectrum Glass has a single car of sand
 8 that it wants delivered, under this arrangement that you are
 9 describing, Ballard Terminal Railroad would move that car
 10 from the Snohomish junction at the interchange of BNSF to
 11 Spectrum?
 12 A. You are accurate.
 13 Q. If Spectrum for some reason had ten or more cars of
 14 sand or whatever other material --
 15 A. Soot ash.
 16 Q. -- soot ash, the arrangement you are describing
 17 would be for WATCO to move the traffic?
 18 A. That is one concept of --
 19 Q. Okay.
 20 A. It's like the straw man, the starting point of
 21 discussions for how we would transition service between the
 22 two.
 23 Q. I understand that. I just wanted to make sure I
 24 got clear what you meant by ten cars. This concept that you
 25 have described, this possible arrangement that you discussed

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1 Q. (By Mr. Ferguson) I would like you to take a look
2 at what has previously been marked as Exhibit 70. Do you
3 recognize this e-mail?
4 A. Yes, I do.
5 Q. Can you identify it for us, please.
6 A. An e-mail that I sent to Greg Starup on
7 October 19th with attachments.
8 Q. Let's look at one of those attachments. I want you
9 to turn to the attachment that is titled, "500,000 high-yield
10 debt opportunity." It is about midway through the packet.
11 Are you with me?
12 A. Yep.
13 Q. All right. I have a question for you about this
14 section under "Repayment plan." There is a statement -- I am
15 going to paraphrase this here, and I want you to tell me if
16 it is accurate. Capital can also be repaid with cash flow,
17 under funding sources, such as, for instance, sale of a
18 bridge easement to Woodinville. Are you with me?
19 A. Mm-hmm.
20 Q. Have I accurately paraphrased the manner in which
21 capital can be repaid?
22 A. There's a variety of ways.
23 Q. But the sale of a bridge easement to Woodinville is
24 one of those ways?
25 A. It's one of many ways.

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1 Q. Is it your view that ECR has the right to sell an
2 easement to Woodinville?
3 A. We own --
4 MR. PASCHALIS: I will object to the extent
5 that it calls for a legal conclusion.
6 You can go ahead and answer.
7 A. We own the reserved freight easement, and, if they
8 are going to intrude on that easement and restrict our use of
9 that easement, then, yes, they would have to acquire our
10 rights, since they would restrict us.
11 MR. FERGUSON: It is five minutes until noon.
12 We can stop now for lunch, or we can go a little bit further.
13 THE WITNESS: I am open to keep going if you
14 guys are.
15 MR. PASCHALIS: We will leave it up to you.
16 We are fine to continue.
17 MR. FERGUSON: All right. We will keep going
18 then. We will stop probably after the next subject area.
19 Q. Mr. Engle, I would like you to look at your
20 statement that was submitted to the Board. This is
21 Exhibit 124.
22 A. I have it.
23 Q. Take a look at the second page of your statement.
24 It is the one that is page 52 down in the bottom, center
25 footer.

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1 A. Okay.
2 Q. Take a look at the third paragraph. I am looking
3 at the wrong page. Right page; wrong paragraph. It is
4 Paragraph No. 3 up at the top.
5 A. The one marked No. 3?
6 Q. Yes, beginning, "Kirkland says they want rail."
7 A. Okay.
8 Q. The second sentence says, "We have solid estimates
9 that the cost to reconstruct the track, replace crossing
10 signals, and construct a maintenance of way road as a trail
11 and intermediate feature is about one-third of this figure, a
12 huge savings." Is that statement saying that the cost to do
13 those things, reconstruct the track, replace crossings, et
14 cetera, is one-third of this \$110 million figure referenced
15 in this numbered paragraph 3?
16 A. And I would say the trail included.
17 Q. Fair enough. I am concerned with the dollar amount
18 here. Is that accurate that you estimate that the cost to do
19 these things, construct the track, replace crossing signals,
20 and construct a maintenance of way road as a trail is
21 one-third of \$110 million?
22 A. I would say that it's under a third.
23 Q. Okay, under a third. Do you have a study
24 addressing this cost estimate?
25 A. We utilize the estimates that have already been

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1 provided from RailWorks, Osmose, and Northwest Signals and
2 extrapolated that to this segment of the line.
3 Q. Those studies you just mentioned, RailWorks,
4 Osmose, Northwest Signals, are you referring to studies
5 completed in around early 2013 concerning the freight segment
6 or what you have been referring to as the operating line?
7 A. Yes.
8 Q. What I want to know, and there was some confusion
9 on this point yesterday.
10 A. I believe it.
11 Q. Has ECR undertaken any studies about rehabilitation
12 of the rail infrastructure specifically for the line?
13 A. For the line to be reactivated?
14 Q. Yes. Other than extrapolating from other reports.
15 A. Going beyond extrapolation is not necessary because
16 it's all part of the same line.
17 Q. I just need to clarify something here, because this
18 was unclear yesterday from Mr. Cole, and this is one of the
19 points he deferred to you on. You haven't hired RailWorks to
20 do any study specifically of the segment between Woodinville
21 and Bellevue?
22 A. It would be redundant.
23 Q. This will go quick if you just answer yes or no.
24 A. No.
25 Q. You haven't hired Osmose to do a study specifically

1 between Woodinville and Bellevue?

2 A. No, it would be redundant.

3 Q. And you haven't done that for Northwest Signals
4 either?

5 A. No, it would be redundant.

6 Q. You said that this cost estimate of about one-third
7 the figure, which you say it could be less than one-third,
8 the \$110 million figure, who did the extrapolating?

9 A. I did.

10 MR. PASCHALIS: I will object to the extent
11 that that mischaracterizes prior testimony.

12 A. I did the extrapolation.

13 Q. Can you describe that exercise for us, please.

14 A. You've got 14 miles with "X" number of bridges that
15 have to be inspected and maintained, and we have a fairly
16 good description of the trestles and the bridges. So, in
17 looking at the two bridges that exist in Kirkland, you can do
18 a comparison to those similar bridges on the operating line.
19 Please recall that in 2008 Boeing 737 fuselages were being
20 hauled across them, and they are in equal -- roughly equal
21 condition. The line itself is in roughly equal condition,
22 because no major maintenance has been required on the
23 operating line and have been done on the reactivation
24 segment. It's our firm belief, from our own personal walks,
25 investigation, looking at it, that the track conditions are

1 Q. There is something that existed at one point in
2 time?

3 A. Back of the envelope, piece of paper, scratched
4 out, see about where we are; yeah, we're in the ballpark;
5 done with it. As long as we're in the ballpark at this phase
6 of the game; nobody is going in for financing based on that
7 kind of an estimate.

8 Q. Is this work to bring the track on the line to a
9 Class II level?

10 A. Yes. With the exception that the new track
11 would -- I believe that's a Class IV level.

12 Q. The new track would be --

13 A. The replacement track through Kirkland. If you're
14 going to put track down and it's all going to be new, then
15 you might as well do it to a commuter level standard.

16 Q. Okay. Do you have anything in writing from
17 Mr. Wolford on his estimates?

18 A. That was already submitted. I haven't had use or
19 looked at anything from him since last summer.

20 Q. So, whatever Mr. Wolford provided to you, you
21 produced to Kirkland?

22 A. Earlier, yes.

23 Q. And there is nothing else in terms of an estimate
24 for his work?

25 A. No.

1 very similar. Therefore, I have used the cost per mile as
2 provided by RailWorks. I have used the cost per crossing, as
3 provided by Northwest Signals. And the different crossings
4 require different amounts of work, so I tried to extrapolate
5 by using the most appropriate crossing as a reference point.
6 Then you've got the estimate that RailWorks provided to
7 replace or to put brand-new track down on an existing bed,
8 which is what you have in Kirkland now even though the track
9 is gone. So what would it cost there to put it in, and their
10 cost estimate was \$1.1 million a mile. We had Bobby Wolford
11 go out and give us an estimate of what it would take to rough
12 in a trail through Kirkland, and that was only a couple
13 million dollars.

14 So I am very comfortable, exceedingly comfortable,
15 that we have been conservative in the numbers that we're
16 using to estimate the amount of work to be done. And, again,
17 we will not go through a detailed exercise until the
18 reactivation rights have been granted. Then, we will go out
19 and get competitive quotes to get the work done at the time
20 the work is going to be done.

21 Q. This extrapolation that you performed, is there
22 anything in writing that carried the studies from the freight
23 segment over to the line?

24 A. There's nothing additional in writing that still
25 exists, no.

1 Q. Mr. Engle, I want to just try to clarify one thing.
2 Since Kirkland pulled up the rails on its segment of the
3 line, have you done any kind of a study specifically about
4 what it would cost to put the rails back in to that segment?

5 MR. PASCHALIS: Objection; asked and answered.

6 A. I've already done -- answered your question. We
7 did what was required to understand the cost to do that based
8 on estimates from RailWorks, Osmose, and Northwest Signals,
9 and we will not get specific bids for that work until we have
10 the rights from the Surface Transportation Board.

11 Q. So do you stand by the earlier statements in
12 Ballard's filings that it would cost at least \$10 million to
13 put the tracks back in?

14 A. That is the number that we generally use, that it's
15 going to take \$10 million to rehabilitate the existing track,
16 for example, track that's in the Sound Transit area and the
17 King County area, and it's about 6.1 million to put the track
18 back down in Kirkland, and then it's a few hundred thousand
19 dollars to get the signals right. So roughly \$10 million
20 ballpark. Can I make a statement regarding --

21 MR. PASCHALIS: Don't. If you have anything
22 to say, tell me.

23 (Discussion held off the record.)

24 Q. I would like to direct your attention back to
25 Exhibit 125. This is your e-mail exchange with Mark Blazer

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1 Terminal Railroad?

2 A. Rail service on the line.

3 Q. Let's look at the columns under the heading,
4 "Annual car count"; do you see those numbers there?

5 A. Yep.

6 Q. Did you prepare those numbers?

7 A. Off of their letters of support.

8 Q. All right. Let's look at General Mills first. Can
9 you explain what the numbers 225 and 250 are, please.

10 A. Roughly, based on conversations with Tom English,
11 the number of carloads that they currently have coming into
12 the region and what they have shipped into the region, so it
13 represents a range of anticipated traffic.

14 Q. Okay. You said conversations with Tom English.
15 Earlier, you said that these numbers were based off of
16 support letters; did I hear you correctly?

17 A. A combination thereof, yes.

18 Q. A combination there of what?

19 A. Conversations and their support letters.

20 MR. FERGUSON: Let's mark this next exhibit,
21 please.

22 (Exhibit 131 marked for
23 identification.)

24 Q. Mr. Engle, the court reporter has handed you what
25 has been marked Exhibit 131; do you recognize this document?

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1 A. Yes.

2 Q. Can you identify it, please, for the record.

3 A. It is a letter from General Mills supporting the
4 restoration of rail service on the corridor.

5 Q. There is no listing of annual car count projection
6 in this letter, is there?

7 A. No. Ballard Terminal actually handled their car
8 movements in Ballard when they did the transfer from carload
9 to trucks to have them defloured and trucked across 520 to
10 the Safeway bakery. So we have firsthand experience with the
11 volumes that General Mills has into the area.

12 Q. I thought you just said that your car count
13 estimate that you prepared for General Mills was based on a
14 conversation with Tom English.

15 A. Right, that's where the final figures -- so it
16 started off with our knowledge of what happened in Ballard,
17 and because those shipments were consolidated in Tacoma, I
18 wanted to make sure that that experience was still
19 consistent.

20 Q. Do you have anything in writing from General Mills
21 that provides an annual car count projection?

22 A. No.

23 Q. Okay.

24 A. I have -- we have the old statements from Ballard
25 Terminal. I guess they could have been dug up to verify

1 this, but I have no reason to not believe Ballard, nor when
2 those numbers come up consistent with what Tom English told
3 me.

4 Q. Take a look at the railroad operations for RJB
5 Wholesale; do you see that?

6 A. Yes.

7 Q. Explain how you derived these numbers, please.

8 A. Those are conversations primarily developed between
9 Nick Beck and Ernie Wilson and the -- with the pipe, you
10 typically bulk out before you weight out, when it comes to
11 transportation of pipe. And so, based on his current volumes
12 in a down economy is where the 30 came from, and what he
13 typically runs is the 40, would represent the 40 carloads,
14 and that's based off of his truckload count.

15 Q. For CT Sales, how did you derive these numbers?

16 A. He told us how many truckloads he was getting
17 between -- getting out of Oregon on average out of, I think
18 it's Cascade Steel Mills. It excludes what he receives out
19 of Nucor.

20 Q. Do these numbers represent only incoming shipments
21 to CT Sales?

22 A. Yes. There is an upside to these numbers, which
23 could represent having a bid opportunity, for him to bid on
24 projects in Bellevue, bid on projects to the north, with rail
25 access, but those are upside to those numbers. These are the

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1 numbers of incoming steel.

2 MR. FERGUSON: We are going to take a break
3 and go off the record.

4 (A brief recess was taken.)

5 MR. FERGUSON: Back on.

6 Q. Mr. Engle, I would like to go back to RJB, and I
7 want to look at this 30 to 40 number here. So I can jog my
8 memory, you said that this car count estimate represents the
9 car counts for incoming product --

10 A. Yes.

11 Q. -- to RJB if it were to receive shipments by rail.

12 A. Yes.

13 Q. The 30 number is what you said was a low number in
14 a down economy.

15 A. It's a current. We're still not out of the
16 recession, so --

17 Q. And the 40 you described as an upside?

18 A. Is a longer-term, yeah, more what their typical
19 average is.

20 Q. RJB currently doesn't receive rail service,
21 correct?

22 A. That's incorrect. They have rail service. Their
23 pipe is brought in to Seattle. They send trucks over to pick
24 it up off of railcars and bring them back -- and not Seattle,
25 I'm sorry -- Puyallup, Kent Valley, Auburn, depending upon

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1 where they do it.
 2 Q. So are these numbers then based on railcars that
 3 RJB's product is actually shipped on?
 4 A. That's my understanding from the conversations with
 5 Ernie and Nick.
 6 Q. Okay.
 7 A. And that it doesn't represent all of their volume.
 8 So, in other words, 30 carloads would represent, in the
 9 piping case, 2 1/2 truckloads.
 10 Q. Okay. Hold off on the truckloads for a second.
 11 Some of RJB's product, it is your understanding that it is
 12 shipped by rail to Puyallup or some point south of Seattle
 13 and then offloaded from a railcar and trucked up to RJB's
 14 yard in Kirkland?
 15 A. Absolutely.
 16 Q. So this number, 30, is it based on the number of
 17 railcars carrying shipments that are ultimately bound for
 18 RJB, or is it based on something else?
 19 A. I believe it's based on the number of truck runs
 20 that they make down to retrieve product and bring it back.
 21 Q. Okay.
 22 A. And then it's converted back to carloads. I am not
 23 sure that he has direct information of the number of
 24 carloads, railcar loads.
 25 Q. Where did you get the information about the number

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1 of truckloads?
 2 A. Ernie.
 3 Q. Do you know where Ernie got his information?
 4 A. From Nick.
 5 Q. And was that in conversations with Mr. Beck, or is
 6 there something in writing?
 7 A. I asked Ernie to verify my calculation on this one,
 8 did I do it right, and he confirmed the calculation.
 9 Q. Is there anything in writing that actually shows
 10 the arithmetic?
 11 A. It's pretty simple math. I don't think it takes a
 12 study or calculus to do that.
 13 Q. My question is not about whether the math is simple
 14 or not. My question is: Is there anything in writing
 15 showing the arithmetic of your calculations or Mr. Wilson's?
 16 A. If Mr. Wilson has that, I don't have it. I don't
 17 even recall exactly what's in the RJB letter without looking
 18 at it again.
 19 Q. Let's take a look at it here.
 20 (Exhibit 132 marked for
 21 identification.)
 22 Q. So you recognize this document as --
 23 MR. PASCHALIS: Do you need a moment to read
 24 it?
 25 A. Yeah, let me just finish reading it a second.

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1 Q. Okay.
 2 A. This is a bad copy. "Makes over 90 trips." Okay,
 3 thank you.
 4 Q. So, looking at this letter here, Mr. Beck says, "We
 5 received about 26 railcars of product," correct?
 6 A. "Received about 26 railcars of product," mm-hmm.
 7 Q. All right. But it was my understanding that this
 8 calculation was based on number of truckloads.
 9 A. And it goes down to say, "makes over 90 trips to
 10 transload." That's truckload trips.
 11 Q. Okay.
 12 A. And so 90 divided by three is 30.
 13 Q. So that is based on the assumption that a single
 14 railcar would take the same quantity as would fit in three
 15 trucks?
 16 A. Roughly speaking, yes.
 17 MR. FERGUSON: Let me mark the exhibit here.
 18 (Exhibit 133 marked for
 19 identification.)
 20 Q. This is RJB's next letter. Take a moment to
 21 familiarize yourself with this, please.
 22 A. Okay.
 23 Q. Is there any information in this letter that you
 24 use to derive annual car count projection for RJB?
 25 A. I believe that --

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1 Q. And I am looking at 133. This is the letter dated
 2 August 20th.
 3 A. I believe that the calculation or the quantities
 4 developed were based off of their previous letter. And, if
 5 you take 10,000 tons and a railcar can hold 100 tons, you've
 6 got 100 railcar maximum potential, not 30 or 40. So, once
 7 they have rail service, there is a reasonable opportunity for
 8 them to have greater rail traffic than what we have projected
 9 here.
 10 Q. Is that based on an assumption that it would be
 11 more cost-effective for RJB to have rail service all the way
 12 to its yard in Kirkland, as opposed to shipping part of the
 13 way by truck, as it does currently?
 14 MR. PASCHALIS: Well --
 15 A. That's an absolute because, as a handling carrier,
 16 they're paying the same rate to ship into this region, and,
 17 rather than having it shipped to Puyallup, if the line was
 18 active, they could request that it be shipped directly to
 19 their yard and totally avoid the trucking costs and the
 20 transloading costs. It would be a phenomenal savings to
 21 their operation.
 22 Q. Are you aware of any study showing what, if any,
 23 cost differential there would be?
 24 A. They would pay the same rate to have the material
 25 delivered to Kirkland as it cost them to deliver it to

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1 Puyallup; therefore, they would not have to hire a driver;
 2 utilize a truck; burn fuel; pay overhead to drive down to
 3 Puyallup twice a day to pick up loads and bring them back.
 4 That entire set of activities, capital investment, would not
 5 be required. That would all be a savings.
 6 Q. Okay. You're saying they would pay the same rate.
 7 Would they pay the same amount?
 8 A. Yes. Same rate per carload.
 9 Q. That is not my question.
 10 A. If it cost you \$2,000 to have a -- and I don't know
 11 what the number is, so I am making the 2,000 up -- if it cost
 12 you \$2,000 to have a freight car filled with pipe delivered
 13 to the Puget Sound region, but instead of having it dropped
 14 off in Puyallup, you asked for it to be dropped off in
 15 Snohomish, they are going to make all that savings.
 16 Q. Does it cost the same to have it delivered to
 17 Puyallup as it would cost to have -- if RJB received rail
 18 service to ship by rail the rest of the way to RJB's yard in
 19 Kirkland?
 20 A. Yes. As a handling carrier for BNSF, which Ballard
 21 Terminal is, it costs the same.
 22 Q. So that extra distance from Puyallup through
 23 Seattle, up to Everett, down to Snohomish, down through
 24 Woodinville, down to Kirkland is the same as if the car were
 25 to stop in Puyallup?

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1 A. You're assuming that car is coming in from the
 2 south. What if the car is coming in from the north, from
 3 Chicago? That means, as soon as it gets to Everett, it comes
 4 straight down. I don't know where all the product comes
 5 from, but I do know that BNSF's main line is Everett through
 6 to Chicago. Union Pacific runs primarily up and down the
 7 coast.
 8 Q. So you are saying it is not possible then, for the
 9 current arrangement that RJB has where some of its product is
 10 shipped by rail to a point south of Seattle and then trucked
 11 north, that it's not possible that that is a more
 12 cost-effective option than having all the product shipped by
 13 rail to RJB's yard?
 14 A. I think it's highly unlikely, highly unlikely.
 15 Q. That is what I want to get at. Your assessment of
 16 the car counts is based on an assumption that RJB necessarily
 17 would ship by rail to its facility.
 18 A. They are already shipping by rail to the Puget
 19 Sound area. They have said expressly that they would like
 20 shipments directly to their yard.
 21 Q. I understand they are shipping by rail to the Puget
 22 Sound area already. My question was this: You are making
 23 the assumption that they would ship by rail all the way to
 24 their facility?
 25 A. I was told directly by Nick Beck that he wants rail

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1 service, and he would like it shipped directly to his yard.
 2 Q. I thought Mr. Beck only spoke to Mr. Wilson.
 3 A. I met Mr. Beck.
 4 Q. When did you have this conversation with him?
 5 A. I met Mr. Beck before he signed the letter, which I
 6 guess is earlier in August or June.
 7 Q. Mr. Engle, you said you met him in the summer of
 8 last year, but when did Mr. Beck make that representation to
 9 you that you claim he did?
 10 A. At that meeting.
 11 Q. Let's look at CT Sales, back on Exhibit 96, please.
 12 How did you derive these numbers of 120 for initial and 155
 13 for long-term?
 14 A. Based on the number of rebar shipments that he was
 15 receiving from out of state. They can ship approximately
 16 30,000 pounds on a semi, and they can ship 100,000 pounds on
 17 a railcar.
 18 Q. Is that based on assumptions that CT Sales would
 19 receive all of its rebar by rail?
 20 A. No.
 21 Q. Please explain the assumptions used in generating
 22 that number.
 23 MR. PASCHALIS: I will object to the form.
 24 Q. Do you understand my question?
 25 A. Not really.

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1 Q. How did you come up with an initial car count of
 2 120?
 3 A. If I recall correctly, that was based on the amount
 4 of material that they receive out of the Oregon mill.
 5 Q. So is this car count based only on material
 6 received out of Oregon?
 7 A. I believe so.
 8 Q. Who provided you with the information about what
 9 was received out of Oregon?
 10 A. Ernie.
 11 Q. What were Ernie's numbers to you based on?
 12 A. His work with Jim House.
 13 Q. Did Mr. House provide something to Mr. Wilson in
 14 writing about volumes received out of Oregon?
 15 A. I don't know.
 16 Q. How do you know if the information that Mr. Wilson
 17 gave to you was accurate?
 18 A. It is my understanding that he confirmed that with
 19 Jim House.
 20 Q. How do you have that understanding?
 21 A. Ernie told me. And Jim House, when I met him, said
 22 that he and Ernie had talked quite a bit about the volumes
 23 and what it was they did.
 24 Q. All right. I am going to hand you what has
 25 previously been marked as Exhibit 93. Do you recognize the

1 letter attached to that e-mail?

2 A. Yes, I do.

3 Q. That is the letter submitted to the Board on behalf
4 of CT Sales, correct, in support of Ballard's position?

5 A. Yes.

6 Q. Are these the numbers about shipment volumes on
7 which your annual car count is based?

8 A. I don't recall. I would assume there is some
9 correlation here, yes.

10 Q. So, if it is not based on these numbers, is there
11 something else that your estimate could be based on?

12 A. I have less recollection of the CT Sales figures.

13 Let me just try and -- it would appear to me the numbers are
14 based more on a figure higher than the 8,300 tons and less
15 than the 14,000 tons. So it's in this range, yes. I think
16 it's incorrect in here that it would replace about 2 1/2
17 truckloads; it would actually replace 3 truckloads.

18 Q. You are saying that Mr. House's letter is
19 inaccurate in that regard?

20 A. Yes, I believe that's the case based on more recent
21 conversations about rebar handling on railroads.

22 Q. More recent conversations with whom, Mr. House?

23 A. Ballard. Talking with a couple of other people in
24 the railroad industry. That's where I came up with the
25 information that there is only 30,000 pounds on a typical

1 truckload of rebar, and, again, a carload on the rail is
2 100,000 pounds. Out of California they are only allowed to
3 carry 24,000 pounds of rebar on a truck.

4 Q. Is there anything out of California that is
5 relevant to the shipments to CT Sales?

6 MR. PASCHALIS: I will object to the extent
7 that it calls for a legal conclusion.

8 Q. Are you aware of CT Sales receiving shipments that
9 originate in California?

10 A. I am aware of the fact that CT Sales, like most
11 businesses, gets competitive prices on product from wherever
12 it deems reasonable. And, from a shipping analysis, we were
13 trying to figure out what is the most appropriate comparison
14 between truck -- a truckload of rebar and a train car full of
15 rebar and trying to understand the variables that would
16 influence rate. And that is why California is pertinent,
17 given that it is a potential supplier of CT Sales.

18 Q. But you are not aware of CT Sales in the past or
19 currently receiving any shipments originating out of
20 California?

21 A. Nope.

22 Q. So this number of 120 to 155, is it based on the
23 rebar stock that Mr. House says here in the letter marked
24 Exhibit 93 that is purchased directly from Cascade Steel
25 Rolling Mills in McMinville, Oregon?

1 A. Rephrase the question, please.

2 Q. The car count of 120 to 155, is that based on the
3 receipt of rebar stock from the Cascade Steel Rolling Mills
4 in McMinville, Oregon?

5 A. I believe so.

6 MR. PASCHALIS: Objection; asked and answered.

7 A. I believe so, yes.

8 Q. Is this car count based on the assumption that it
9 would be more cost-effective for CT Sales to receive this
10 rebar from Cascade Steel Rolling Mills by rail as opposed to
11 truck?

12 MR. PASCHALIS: Object to the form.

13 A. That's true.

14 Q. Okay. Are you aware of any studies showing that
15 delivery by these materials via rail is more cost-effective
16 than shipping it by truck?

17 A. For this particular instance, it's my understanding
18 that that loop did not get closed, that Jim House did not get
19 a completed number from Cascade Mills. He said he was going
20 to, but it's my understanding that he didn't, and so that
21 needs to be verified.

22 Q. So you do not know whether shipment by rail from
23 McMinville is cheaper than shipment by truck?

24 A. I cannot be absolutely sure of that.

25 Q. Mr. Engle, I think you said earlier that the

1 numbers in paragraph 2 of Mr. House's letter -- do you see
2 where he says, "Last year we processed and shipped about
3 8,300 tons, but this is still down from our high of about
4 14,000"?

5 A. Mm-hmm.

6 Q. Can you explain for me how we get from tons of
7 processed and shipped rebar to the car counts. I still am
8 not clear on this.

9 A. Take two zeroes off of the tons, and that will give
10 you your car count. So, in other words, last year --

11 Q. I am just not real sharp with numbers.

12 A. I doubt that.

13 Q. You should go look at my high school math class
14 grades.

15 A. So you would have 83-car loads, would be the
16 finished rebar that they did in a down year, and they went up
17 to 140 in a peak year.

18 Q. And that is because, again, as you said, that a
19 railcar can take 100 tons?

20 A. Yes.

21 Q. These car count numbers for CT Sales here in 96,
22 the 120 and the 155, they are for incoming shipments,
23 correct?

24 A. Yes.

25 Q. But the letter here, do you understand these

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1 numbers of 8,300 and 14,000 to be for --
 2 A. Finished.
 3 Q. Finished.
 4 A. For finished product going out.
 5 Q. Okay.
 6 A. And so two things that you need to be cognizant of,
 7 and that is that no manufacturing facility, or very few that
 8 I'm aware of, have 100 percent efficiency of what they bring
 9 in versus what they ship. So, in other words, I may bring in
 10 100 pounds, and I only produced 8 pounds of finished product,
 11 because it has to be cut to length. It might be cut and
 12 fabricated at an angle, and therefore I've got other scrap,
 13 et cetera. You also need to take into account that not every
 14 truckload is 100 percent full, just as every railcar is
 15 likely to be 100 percent full.
 16 So there are some inefficiencies that don't allow
 17 you to -- inefficiencies, some realities, that don't allow you
 18 to do perfect math from output, which is 14,000 tons, which
 19 would be 140 fully loaded railcars of outputted item. If you
 20 were able to fill every rail carry 100 percent full, that
 21 would be 140. So, to assume even a 5 percent scrap rate, you
 22 would be over 155 cars. So you have to take into account --
 23 so outbound -- all I'm trying to say is that outbound
 24 finished product does not equal inbound raw material.
 25 Q. Right. But this car count number is an inbound

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1 estimate?
 2 A. This is an inbound estimate.
 3 Q. The letter --
 4 A. Is an outbound.
 5 Q. -- is an outbound?
 6 A. Right.
 7 Q. And the inbound is not the same as the outbound
 8 volume?
 9 A. Correct. The inbound volume will be greater than
 10 the outbound volume. The most vertically integrated plant in
 11 North America is in Martinsville, Indiana, making stereo
 12 equipment for the auto industry, and they try to recycle
 13 everything, and they're still only in the upper 90s as far as
 14 efficiency goes.
 15 Q. Thank you, Mr. Engle. I want to run through the
 16 same thing with Aggregates West as I am sure you can probably
 17 tell.
 18 A. Okay.
 19 Q. I know it has been a long day. I would just ask
 20 that, if you could not use your -- are you using your phone
 21 as a calculator?
 22 A. Yeah, it's got a calculator app. Right here. I
 23 was just trying to double-check my math to make sure that my
 24 brain was working correctly.
 25 Q. That is fine to use that as a calculator; I know I

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1 need to. I didn't know if you were e-mailing or --
 2 A. It's my good old HP 12C from college. There's an
 3 app for that.
 4 Q. Let's talk about Aggregates West.
 5 A. Sure.
 6 Q. So the same questions essentially. Can you explain
 7 how you derived these numbers for Aggregates West.
 8 A. I think these are the most conservative numbers for
 9 Aggregates West. I am very enthused about the possibility
 10 with them. I believe right now, for example, they're
 11 shipping roughly what -- this year so far they have shipped
 12 60,000 tons into Seattle.
 13 Q. I want to stop you right there, into Seattle.
 14 These are for car count shipments into Bellevue, correct?
 15 A. Right, and there's a ton of construction going on
 16 in Bellevue, too.
 17 Q. This was an issue that came up in Mr. Day's
 18 deposition about where the aggregate is going.
 19 A. Sure.
 20 Q. So is it your testimony that anywhere Aggregates
 21 West would ship within King County, for instance, would all
 22 be going to Bellevue?
 23 A. No.
 24 Q. So I want to try to focus on what actually would be
 25 shipped into Bellevue.

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1 A. Then get the spoils hauling analysis out. That's
 2 got a list of the active projects in Bellevue, and I would be
 3 happy to refer whatever questions you have to that document.
 4 Q. I want to know where you got the numbers for
 5 Aggregates West.
 6 A. They would refer to the spoils hauling analysis
 7 that gives us a market size and what they -- conveyed to me
 8 from Scott Day -- they thought they would be able to do down
 9 into this market. He told me that this number here of 300 is
 10 very conservative.
 11 Q. And that is 300 railcars carrying 100 tons apiece?
 12 A. Yep.
 13 Q. So the conversion that you have made then is just
 14 from the aggregate tonnage shipped by Aggregates West. I
 15 want to understand what Mr. Day said to you; is it material
 16 that he knows will be shipped to Bellevue?
 17 A. Yes.
 18 Q. And so you have taken that and you have divided it
 19 by 100?
 20 A. Yes, essentially.
 21 Q. I want to hand you what has previously been marked
 22 as Exhibit 97. Can you identify this letter for us, please.
 23 A. It looks like the Aggregates West letter to the
 24 Surf. Board.
 25 Q. This letter does not contain any kind of estimate

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1 of the total amounts that Aggregates West would ship to
 2 Bellevue in any given year, does it?
 3 A. The letter itself does not contain that
 4 information, no.
 5 Q. Nor does it contain any car counts?
 6 A. It has no volume information in the letter.
 7 Q. So I am just trying to understand, then, from where
 8 did you obtain the volume information?
 9 A. Many conversations with Scott Day and Ernie. They
 10 are also a supplier of CalPortland. So, when we looked at
 11 the market from what we identified -- and I believe we had
 12 lunch together in Snohomish, and we talked about these
 13 things, and that's where the volumes were come up with to be
 14 safe, because one of the things that I learned -- I've
 15 learned in my experiences that you want conservative numbers
 16 wherever possible. And, if he said he could easily get 300
 17 and that 600 is up on -- or 500 is on the upside is not
 18 unreasonable, then that's the range that I went with. So I
 19 am certain these numbers reflect the conversations that we've
 20 had directly with Scott.
 21 Q. Are you aware of anything in writing where Mr. Day
 22 confirms that Aggregates West would expect to ship any
 23 particular number of carloads?
 24 A. I am not aware. I know that he has carefully
 25 reviewed the spoils analysis relative to the market. He is

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1 very familiar with the Bellevue market; they have been
 2 serving it for years. And, if this is the information that
 3 he provided me and he feels comfortable with it, then that's
 4 what I put down. I certainly did not pull these out of my --
 5 air, out of the air.
 6 Q. All right. I want to look at this last item here
 7 in the reactivation freight customers group, "Ready mix
 8 concrete plant, letter pending." There are no annual car
 9 count estimates for that row, correct?
 10 A. Correct.
 11 Q. Is ready mix concrete plant the name of a business?
 12 A. No.
 13 Q. This letter pending, can you just explain what this
 14 row is referring to.
 15 A. We had a conversation with Smokey Point Sand &
 16 Gravel about putting in a smaller batch plant there and --
 17 Q. Where?
 18 A. Bellevue.
 19 Q. In the yard?
 20 A. In the yard area. And they ultimately came back
 21 and decided that it was premature -- right when we were down
 22 to the letter -- that it was just premature to do it until we
 23 understood what the Surface Transportation Board was going to
 24 do, because the next level of analysis for this -- in other
 25 words, if I'm asking for car counts -- would be them doing a

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1 much more detailed analysis, because they would have the
 2 greatest capital investment, fixed costs, in order to make --
 3 put a batch plant in. And it was their opinion to wait until
 4 the Surface Transportation Board made a decision before they
 5 would go any further with it.
 6 Q. So in the productions that we received from your
 7 counsel, I didn't see any communications with Smokey Point or
 8 any documents from Smokey Point.
 9 A. I think that we were -- we had conversations; we
 10 met -- after many phone calls, we met for coffee; we sat down
 11 and talked about it; he went back and talked to his Board,
 12 and that's where it fell down.
 13 Q. Okay. So you were not aware of any written
 14 communications or other documents exchanged with Smokey
 15 Point?
 16 A. No.
 17 Q. And I take it that Smokey Point has not provided
 18 you with any letters to be submitted to the STB?
 19 A. No, they have not. Again, it's this -- it's the
 20 general -- when you get to a certain point, it becomes a
 21 highly inefficient use of time to nail down what the
 22 investment would be and how you would do that without knowing
 23 that it's a real possibility. So we've had other people,
 24 just conversations and stuff, and they're like let us know
 25 what happens, and come back and see us.

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1 MR. FERGUSON: I would like to go off to take
 2 a short break.
 3 (A brief recess was taken.)
 4 Q. Mr. Engle, thanks for walking me through all those
 5 car count calculations. I want to ask you now some other
 6 questions about the businesses listed in Exhibit 96 as
 7 potential reactivation freight customers. Let's start with
 8 General Mills, and let's actually take a look at the letter
 9 that was submitted. I believe this is Exhibit 131. First of
 10 all, has General Mills made any commitment to Ballard or ECR
 11 to ship flour by rail to any point in Bellevue?
 12 A. Yes, they have asked.
 13 Q. Is that commitment reflected in this letter?
 14 A. "We currently deliver bulk truckloads of flour to a
 15 large customer there," -- Safeway -- "and delivering by rail
 16 would be a large environmental and competitive benefit."
 17 MR. PASCHALIS: And you are reading from the
 18 letter, for a sense of clarity.
 19 THE WITNESS: And I'm reading from the letter.
 20 Q. Do you take that to be a commitment to utilize rail
 21 service by Ballard Terminal Railroad?
 22 A. Absolutely.
 23 Q. Is there anything other than this letter that
 24 informs your belief that General Mills has made such a
 25 commitment?

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1 A. It has to do with my interest in other aspects of
2 this project. For example, the excursion train, in order for
3 the excursion train to be successful, you don't have to be
4 the freight operator. I'm not going to claim that freight is
5 my deepest background; I think that there are others that
6 know how to play that game better. I think that there are
7 other things that may come up, and, who knows, with the Sound
8 Transit 3 ballot, that there may be some public-private
9 partnership money to use this line. There will be brand-new
10 track in from Bellevue through Kirkland, so who knows.
11 That's not my call.

12 Q. So, when you speak of other entities that do
13 freight better, who are you referring to?

14 A. Ballard and WATCO.

15 Q. Do you have any plans to remove yourself or
16 Eastside Community Rail at any point in the future from rail
17 activation and rail operations on the Eastside Corridor?

18 A. I have no plans. I have no plans. I guess we wait
19 until the Surf. Board makes a decision and we see who the
20 players are at the table and what comes out of it.

21 Q. If Ballard prevails on its petition and gets
22 reactivation rights to the line, what is the anticipated
23 effect of shipping volumes on the line?

24 A. I think there will be a significant increase in
25 traffic on the line. The hope and intention is that those

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1 WATCO is interested in partnering just with respect to the
2 freight segments at this time; is that correct?

3 A. Yes, they have no interest in passenger operations.

4 Q. What would a successful reactivation of the line
5 between Bellevue and Kirkland -- how would that affect
6 WATCO's interest in participating in freight rail operations?

7 MR. FERGUSON: Objection; calls for
8 speculation.

9 A. No, I've had conversations with WATCO specifically
10 about this. As the line exists today, the operating line
11 today, WATCO is not interested in participating. With the
12 addition of Bellevue and the potential traffic there and the
13 business development that could occur there, they have very
14 open interest. They would not have invested the time in
15 putting that letter together; they would not have invested
16 the time bidding on the opportunity to run -- they bid
17 against GNP and the Port, BNSF bid process in 2008. So I
18 think they've had a long-term interest and a long-term eye on
19 the line, but the volumes are going to have to be bigger for
20 them to be involved.

21 It makes me -- one of the things that WATCO brings
22 to the table that the region -- and this is speculative, but
23 one of the things WATCO brings to the table is, being a
24 trusted partner of BNSF, is helping Boeing. If Boeing, for
25 example, wanted to put that Triple 7X plant in Marysville, it

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1 rail movements are controlled enough that it has the least
2 impact on the commuting public, so trying to get those
3 movements to happen during off hours. The vision that we had
4 for the rail yard in Bellevue was that there would be a trip
5 in in the morning, some switching activity, and then a train
6 out at night, and that would be pretty much, I think, the
7 extent of the freight. What we're hopeful again is, in the
8 Maltby area, is partnering with Snohomish County and the
9 Economic Development Alliance in making the Maltby area a
10 true industrial, rail-based industrial, area.

11 Q. Is it fair to say that there is an impact on both
12 the line in terms of volume and the freight segment?

13 A. Yes. I would like to see Kathy Cox; I think she
14 has a great vision. I don't know that she wants to operate
15 the excursion train, but I think she's got a great vision and
16 business plan for it. There's overwhelming support by the
17 wineries in the state. It would be very supportive of the
18 cruise ship business and expanding tourism in the region, and
19 I hope that -- The Spirit of Washington was successful for 15
20 years until the bridge was removed, and I would like to see
21 the excursion train back. Is that something that I want to
22 operate? I don't think so, but I sure would like -- I think
23 it would be a nice regional amenity.

24 Q. Now, there was testimony, as I recall much earlier
25 on, that WATCO's interest -- well, I believe you said that

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1 might be possible that our little railroad, with WATCO, so,
2 in other words WATCO, could partner with Boeing to handle
3 those wing movements. I don't know. But WATCO would have
4 the kind of credibility that would give assurances to Boeing
5 as being a trusted rail partner that I don't believe Ballard
6 or certainly Eastside Community Rail would ever achieve with
7 a company like Boeing.

8 Q. What is that based on with respect to WATCO and its
9 abilities?

10 A. The kinds of partnership deals that they have with
11 BNSF today. It has to do with direct conversation with BNSF
12 about the depth and trust. There are certain things that
13 Boeing -- excuse me -- that BNSF really doesn't like doing
14 for Boeing that a player like WATCO could take over. And a
15 player like WATCO would be happy to do those things, much
16 like a short line operator is happy doing the low margin
17 short line stuff.

18 Q. So, based on what you have just testified to with
19 respect to WATCO's interest, if only the freight segment is
20 operational versus Watco's interest if both the freight
21 segments and the line are operational for freight rail, do
22 you have an understanding as to whether or not WATCO's
23 interest in partnering with you is contingent upon obtaining
24 the reactivation rights from the Surface Transportation Board
25 to operate on the line?

Page 180	Page 182
ENGLE/Paschalis 180 1 A. I think WATCO has been very clear that, like 2 others, the first thing that has to happen is the 3 reactivation by the Surf. Board, and then, No. 2, is 4 confirmation and transportation agreements being formalized, 5 and then they will deploy the necessary, appropriate 6 resources to make the freight operations successful. 7 Now, what is also in that mix is that the 8 excursion, based on car vehicle miles, is that the excursion 9 operations should also be expected to contribute to the 10 capital upgrades beyond what the freight rail would need. 11 What I mean by that is that chances are the freight rail 12 would want the track condition to be at least Class I, maybe 13 Class II, as being their -- where they want to hold it. So 14 that, if we want to move it up to a Class III for whatever 15 reasons, then the excursion train should pay that delta. It 16 would be the responsibility of the excursion train to pay 17 that portion entirely and then share in the costs of 18 maintaining the railroad from there. 19 Q. You have sort of gone over this to some extent, but 20 I just want to clarify. To the extent that WATCO's interest 21 in partnering with you and Byron is contingent upon obtaining 22 reactivation rights to the line, has that had an effect on 23 what stage WATCO is in, in the process of determining whether 24 or not to, in fact, enter into a partnership with you guys? 25 A. Absolutely. We wait until the STB decision, and	ENGLE/Paschalis 182 1 really of control over train movements on the line. 2 Q. Is what you are describing the activities contained 3 in WATCO's letter, Exhibit 115, that were being discussed 4 quite some time ago? 5 MR. FERGUSON: Before you answer, Mr. Engle, 6 Tom, can I ask the court reporter to reread that question. 7 MR. PASCHALIS: Yes. 8 (The previous question was 9 read back.) 10 Q. And to add some more specificity, I am talking 11 about paragraph 3, the three Roman numerals, one, two, and 12 three. 13 A. Yes. I'm elaborating on that in particular. I 14 think that's the key to WATCO's involvement is, as they very 15 clearly said, reactivation and then verifying the shipment -- 16 the freight volumes are there. And I think there's a strong 17 desire to bring them in, that there's a lot of intangible 18 benefits, and we have no desire or intention of misleading 19 them about the opportunity. 20 Q. Did you say you would anticipate this work 21 beginning immediately? 22 A. Immediately upon reactivation, I think we would 23 have to have a strategic meeting with the stakeholders, and I 24 believe that those stakeholders at some point include the 25 communities that the line passes through and Sound Transit in
Page 181	Page 183
ENGLE/Paschalis 181 1 then we make the decision about how we're going to go 2 forward, but they will not go forward with the relationship 3 until the STB decision is known. And having somebody like 4 WATCO involved would be a favorable finger on the scale from 5 a financing perspective; it would be a favorable finger on 6 the scale even for the excursion business. I think that 7 there are a number of -- again, there are a number of 8 intangibles that WATCO brings to the table, and, frankly, at 9 some point Ballard or Paul Nerdrum may find those 10 advantageous for his other lines. That's my speculation, but 11 we'll see what happens. 12 Q. So assume that the reactivation effort before the 13 Board is successful and Ballard obtains the reactivation 14 rights to the lines, then what happens with respect to WATCO? 15 A. I think we start in on an immediate due diligence 16 process with the shippers that have stated they can move 17 these volumes and confirm what the timing would be on making 18 those transitions and start-ups. And, again, they have made 19 it very clear that the due diligence on that involves getting 20 transportation agreements with everyone. Although they don't 21 want to be in the passenger business, they appreciate the 22 fact that their crews -- that they would have the scheduling 23 rights with the excursion train, but they would have the 24 schedule, and their crews would physically move the excursion 25 train up and down the track. So they would be in a position	ENGLE/Paschalis 183 1 Bellevue, as well. Because, as we have said all along, we 2 would like to see that trail go in as soon as possible, 3 freight service does not have to be ugly, and we believe that 4 here we are 2007, 2014, six, seven years later, and most 5 people in Seattle remember the dinner train fondly, that the 6 excursion train would be a very strong, positive amenity to 7 our area. 8 Q. There was some discussion earlier about the 9 estimates that you were using to estimate the costs of 10 placing track infrastructure on the line currently; do you 11 remember that? 12 A. Yes. 13 Q. You had testified that you are relying on estimates 14 pertaining to the freight segments in large parts? 15 A. Yes. 16 Q. And that there were similarities between the 17 features on the line and the freight segments? 18 A. Yes. 19 Q. There was a few entities that you mentioned that 20 were involved in the estimates with respect to the freight 21 segment; is that correct? 22 A. I'm sorry, try that again. 23 Q. There was testimony that there was a few entities 24 that you worked with to obtain estimates for improvements on 25 the freight segments; do you recall that?

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ENGLE/Paschalis 188 1 Q. What do you mean by start with a clean slate? 2 A. Let's have a real conversation about what we should 3 do with this rail corridor. We're obviously going to be 4 using it, but how do we use it in cooperation and in concert 5 with the rest of the region. 6 Q. A conversation with who? 7 A. I think all of the stakeholders. Everybody who 8 touches the line I think needs to be in the same room and 9 then talk. 10 Q. Would that include the municipal entities that are 11 involved in this proceeding? 12 A. Yes, and it would also include the regional 13 authorities, as well. 14 Q. You mentioned RJB and what your plans would be 15 after obtaining reactivation for a spur track. 16 A. Well, getting to RJB would not necessitate a spur 17 being installed because you would be using the actual line 18 itself to begin with. 19 Q. What do you mean by that? 20 A. You basically just use the line itself as the spur. 21 I think one of the possibilities in Kirkland is you put the 22 railroad under 124th and 124th, but that's a bigger bite of 23 the apple than the railroad can handle. Going over, there's 24 actually less space to do that, but it might be more 25 complimentary to the developer of the mall, I don't know, but	ENGLE/Paschalis 190 1 Q. So you have described several options for both 2 short short-term and long-term on how they would access the 3 line and be able to ship. Have you had those conversations 4 with RJB itself? 5 A. We brainstormed a number of things, but the 6 commitment that we made to each other was that we would 7 partner and cooperate in figuring it out. It didn't make 8 sense to have drawings done or anything like that until we 9 know whether or not it's going to happen. 10 Q. How soon after reactivation would you start the 11 process of having a detailed, comprehensive evaluation of 12 getting RJB access to the line? 13 A. Within 30 days with the intent of having service to 14 them this year. 15 Q. There was some discussion earlier about your 16 inspections of the area of the Bellevue yard; do you recall 17 that? 18 A. Yes. 19 Q. And the nature of rehab work that would need to be 20 done -- 21 A. Yes. 22 Q. -- to make it usable to railroad operations. 23 A. Yes. 24 Q. And you had indicated that several other people had 25 also gone down there to take a look, as well.
Page 189	Page 191
ENGLE/Paschalis 189 1 I think that's a good spot that where we're extending our 2 service and it getting the traffic up on the corridor, and 3 we -- it gives us time to have a cooperative conversation. 4 Q. Now, RJB is on the portion of the line that 5 currently is inactive for freight operations? 6 A. That's true. 7 Q. How has that fact affected how far you have gone in 8 your discussions with RJB regarding the construction of a 9 spur track or the means of accessing the line? 10 A. We brainstormed a number of ideas. His yard as it 11 exists today is not cohesive, is not good to load and offload 12 pipe; however, by using part of the right-of-way and not 13 having the spur in place, you could easily start moving pipe 14 as soon as you got there, and, again, in looking for what's a 15 long-term solution. If there was genuine dialogue and 16 cooperation going on or the intent to have that, one of the 17 alternate solutions that could be done there is that we 18 flatten the rail structure because you're going to have to go 19 back in and add the ballast anyway. So, if you flatten it 20 down, it wouldn't be 8 to 12 feet higher, it would be maybe 21 2 feet higher, and then you could bring dirt up next to it to 22 make loading and offloading easier. And that scenario works 23 for RJB, and they would have adequate access to at least one 24 railcar at a time, maybe two, but at least one railcar at a 25 time.	ENGLE/Paschalis 191 1 A. Yes. 2 Q. You were asked about Mark Blazer; do you recall 3 that? 4 A. Yes. 5 Q. What was your answer? 6 A. I believe that Mark Blazer -- he told me that he is 7 familiar with the area. I believe that, during the bid 8 process of 2008, that he looked it over, physically was on 9 site there. So I think that -- and I know that he did the 10 high rail tour of the line, so he's familiar with the entire 11 line. 12 Q. We have discussed earlier that WATCO's 13 participation in freight operations is contingent on actually 14 getting the line reactivated. 15 A. Yes. 16 Q. So what is your understanding of whether or not 17 Mr. Blazer and WATCO would come out to that area and look and 18 evaluate it further if reactivation is successful? 19 A. I would imagine they would be out within 30 days to 20 start the process. I don't know how long their evaluation 21 process would take, but we would -- I would say it would take 22 90 days to put together an updated business plan to run the 23 numbers and to get an understanding of what's really 24 possible. 25 Q. Okay. So the wheels really start going in motion

Page 200	Page 202
ENGLE/Paschalis 200 1 A. I would say that it's necessary. 2 Q. And tell me whether or not you would anticipate 3 more planning with General Mills after reactivation of the 4 line. 5 A. Some amount, yes; I don't know how much. 6 Q. Do you recall discussing a comment in one of your 7 e-mails with General Mills about a feeling that reactivation 8 might be dead without support from them? 9 A. At that point in time, we really needed a break, 10 and we got one. 11 Q. I think you have said that, at this point in time, 12 your feelings are not the same -- 13 A. No. 14 Q. -- that you do not feel that General Mills makes or 15 breaks anything? 16 A. No. 17 Q. But, in any event, you communicated that General 18 Mills' support would be of great consequence? 19 A. And I still think that their support is of great 20 consequence because they would be a regular shipper, where a 21 CalPortland; Aggregates West; Wolford are dependent upon 22 construction activities. 23 Q. So you advise General Mills that their support is 24 of great consequence, and then what happened next? 25 A. Proverbially, it went upstairs to people that can	ENGLE/Paschalis 202 1 Q. So you were asked some questions about other real 2 estate potential for areas near the rail, and that was the 3 subject of some arguments objections. The only question I 4 have is whether or not it is customary for railroads to have 5 partners in those kinds of development operations. 6 A. Absolutely. Railroads have real estate departments 7 to maximize the value of their landholdings, and different 8 things are -- there are many different uses on railroad 9 lands. For example, Madison Square Gardens sits on top of a 10 railway station. 11 Q. Is there a relationship between CalPortland and an 12 entity that I believe is called Glacier? 13 A. Glacier was acquired by CalPortland. 14 THE WITNESS: She gets to start the tab 15 without me. 16 MR. COHEN: I will tell her you will be late. 17 MR. FERGUSON: Bottle service. 18 THE WITNESS: Are you skating out? 19 MR. COHEN: Yes. 20 THE WITNESS: It's great to be the boss. How 21 did Mel Brooks put it? "It's great to be the king." 22 Q. So is it your understanding that the track on the 23 line has been removed by Kirkland? 24 A. Yes. 25 Q. Is General Mills aware of that?
Page 201	Page 203
ENGLE/Paschalis 201 1 make those decisions, and it bounced around up there for a 2 few weeks, and came out with a very brief support letter. 3 Q. So, upon being advised that their participation was 4 of great consequence, their reaction was to offer a support 5 letter? 6 A. Yes. 7 Q. They did not have to do that, did they? 8 A. No. 9 Q. So what does that tell you about their interest in 10 having the line reactivated? 11 A. I think they see very clearly that it will save 12 them money, but at the same time it's pretty clear that 13 they're not going to put a lot of work into this until it's 14 reactivated, much like -- this is such a chicken and egg. 15 MR. COHEN: Do you want us to call Cutter's 16 for you, Mr. Engle? 17 THE WITNESS: I'm about ready to have you do 18 that. I'm about ready to text my daughter and just say -- 19 MR. PASCHALIS: Why don't you take a couple of 20 moments and do that, if we can go off the record for a 21 moment. 22 (A brief recess was taken.) 23 MR. PASCHALIS: Let's go back on. 24 THE WITNESS: You have a hard stop though at 25 6:00.	ENGLE/Paschalis 203 1 A. I believe so. 2 Q. Is RJB Wholesale aware of that? 3 A. Yes. 4 Q. Is CT Sales aware of that? 5 A. Yes. 6 Q. Is Wolford Trucking & Demolition aware of that? 7 A. Yes. They bid on the removal. 8 Q. Is CalPortland aware of that? 9 A. Yes. 10 Q. Is Aggregates West aware of that? 11 A. Yes. 12 Q. And, certainly, Paul Nerdrum is aware of that? 13 A. Yes. 14 Q. And EB5 is aware of that? 15 A. Yes. 16 Q. But they are all still supporting your reactivation 17 efforts, correct? 18 A. Correct. 19 Q. So they all still believe it is feasible to get the 20 line reactivated and get the resumption of freight 21 activities? 22 MR. FERGUSON: Objection; leading; calls for 23 speculation. 24 A. They all continue to support reactivation of the 25 line.

Page 204	Page 206
ENGLE/Paschalis 204 1 Q. Even after the rails were removed? 2 A. Especially after the rails were removed. 3 Q. You are saying support increased at that point in 4 time? 5 A. Yes. 6 Q. So, really, just in basic terms, you have sat 7 through two depositions now; it has easily been probably over 8 15 hours of testimony, and many of the people who support 9 have you also been deposed. Why are they and you doing this? 10 First of all, you. Why are you doing this? 11 A. Because I think this corridor has incredible value 12 to the entire region, beyond a trail. 13 Q. Tell me whether or not the other entities that are 14 supporting reactivation feel similarly. 15 A. I believe that all the entities supporting 16 reactivation believe in rail and trail, and rail meaning 17 maintaining freight; commuter; excursion, that all the 18 supporters believe in that. 19 Q. So, ultimately, you and Kirkland both want a trail? 20 A. Yes. 21 Q. Both yourself, your partners at Ballard, and the 22 shippers have all been willing to provide support and sit 23 through depositions enable to pursue this reactivation 24 process? 25 A. Yes, as joyous as it is.	1 letter came in, you got your big break; do you recall that, 2 or should we have the court reporter read it back? 3 A. I believe what I said is that we needed a break at 4 that time, and we got it. And General Mills wasn't the only 5 thing that happened at that time; there were multiple things 6 that coalesced around that. General Mills happening was a 7 high-five moment, but it wasn't the only thing that happened 8 at that point in time. I remember there were like three 9 things that came together at one time that were favorable to 10 our potential. 11 Q. Can you tell me what those three things were. 12 A. General Mills; I believe RJB came in around the 13 same time; and we -- WATCO, I think, started conversing more 14 seriously. 15 MR. FERGUSON: Thank you. 16 THE WITNESS: You're welcome. 17 MR. WAGNER: I have nothing. 18 MR. MARCUSE: I am going to refrain from 19 asking any further questions. 20 MR. WAGNER: Yes, that was what I meant. 21 MR. PASCHALIS: Let me just ask -- 22 MR. WAGNER: If we knew you were going to ask 23 questions -- 24 MR. FERGUSON: Mr. Paschalis, are you asking a 25 follow-up to my question?
Page 205	Page 207
1 Q. Would you do it any differently, even having gone 2 through all of this? 3 A. I would not have started this process when we did. 4 I would have waited until we had the support lined up, then I 5 would have pursued. It's unfortunate that Kirkland did not 6 want to engage in a dialogue about the use of the corridor. 7 Even the city's economic development committee was not 8 informed as to possible uses of the corridor. The city 9 council today -- today -- is just learning that the process 10 is continuing. And they were led to believe that this was 11 all done back when the rails came out, and they are surprised 12 at the amount of legal expenses going on this project. 13 MR. PASCHALIS: Okay, I have nothing further. 14 Go ahead, Mr. Ferguson, if you have anything. 15 MR. FERGUSON: We are going to take a break 16 and discuss, and we will come back. 17 (A brief recess was taken.) 18 MR. FERGUSON: Back on. 19 20 EXAMINATION 21 BY MR. FERGUSON: 22 Q. Mr. Engle, I have one question for you, and I might 23 have just missed it. 24 A. Super. 25 Q. You said, I believe, that, when the General Mills	ENGLE/Paschalis 207 1 MR. PASCHALIS: I am, yes. 2 MR. FERGUSON: Okay. 3 4 EXAMINATION 5 BY MR. PASCHALIS: 6 Q. So, around this period of time, was that around the 7 time that Kirkland started removing the tracks? 8 A. Yes. 9 Q. Hadn't Ballard filed a motion for reconsideration 10 of the denial of the preliminary injunction? 11 MR. FERGUSON: Mr. Paschalis, I will object 12 that this is improper and has no rebuttal quality or anything 13 to do with what I just asked. 14 MR. PASCHALIS: Thank you. 15 Q. Go ahead. 16 A. It's my opinion, and that of some others I know, 17 that, when the tracks came out, it kind of galvanized the 18 awareness of the value of the corridor beyond just a trail, 19 that's it. 20 Q. Okay. So all I wanted to find out is whether or 21 not the tracks having come out affected your thoughts on the 22 reactivation efforts around the time that you were talking to 23 General Mills. 24 A. I think, at that point, it was the decision to go 25 all-in, so we did.

EXHIBIT 12

Thomas Paschalis

From: Nick Beck <nick@rjbwholesale.com>
Sent: Thursday, January 30, 2014 2:10 AM
To: Myles Tobin
Cc: Thomas J. Litwiler; Thomas Paschalis; Tom Montgomery (tom@montgomeryscarp.com); Charles A. Spitulnik Esq. (cspitulnik@kaplankirsch.com); Eric Pilsk (epilsk@kaplankirsch.com); Allison I. Fultz Esq. (afultz@kaplankirsch.com); Wagner, Jordan (jordan.wagner@soundtransit.org); Peter G Ramels (Pete.Ramels@kingcounty.gov); Andrew Marcuse (andrew.marcuse@kingcounty.gov); Cohen, Matthew; Hunter Ferguson (hoferguson@stoel.com)
Subject: Re: Eastside/Ballard - STB Finance Docket 35731

I'm out of town on a business trip. I intend on answering all questions. As I've always said, I support both the city of Kirkland's and. ballard's position. With that being said, I firmly believe rail is the most cost efficient and environmentally friendly method of moving freight. It is my position that walking trails can coexist with rail.

Sent from my iPad

> On Jan 29, 2014, at 2:56 PM, "Myles Tobin" <mtobin@fletcher-sippel.com> wrote:

>

> Dear Mr. Beck,

>

> As information I represent Ballard Terminal Railroad. I understand that you have been served with requests for depositions and documents in connection with the above proceeding. Attached is a copy of our objections to the discovery requests and depositions which we filed with the Surface Transportation Board. Please be aware that you cannot be required to comply with these deposition and discovery requests unless and until the Surface Transportation Board determines that you are required to do so. I will keep you posted as to the Surface Transportation Board ruling.

>

> Regards,

>

> Myles L. Tobin, Esq.

> Partner

> Fletcher & Sippel LLC

> 29 North Wacker Drive, Suite 920

> Chicago, IL 60606-2832

> (312) 252-1502

> (312) 252-2400 (Fax)

> mtobin@fletcher-sippel.com<<mailto:mtobin@fletcher-sippel.com>>

>

>

> <1-27-14 Ballard & Eastside's Joint Reply to Motion to Issue Subpoenas, et al. and Motion-.pdf>

EXHIBIT 13

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731)
 BALLARD TERMINAL)
 RAILROAD COMPANY, L.L.C.)
-ACQUISITION AND EXEMPTION-)
 WOODINVILLE SUBDIVISION)
)
STB DOCKET NO. AB-6 (SUB. NO. 465X))
 BNSF RAILWAY COMPANY)
-ABANDONMENT EXEMPTION-)
 IN KING COUNTY, WA)
)

Deposition Upon Oral Examination
 of
 SCOTT DAY

Taken at 123 Fifth Avenue
Kirkland, Washington

DATE: February 7, 2014

REPORTED BY: Wade J. Johnson, RPR
 CCR No.: 2574

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DAY/Ferguson 39

1 A. No.

2 Q. Did you all have a phone conversation either this

3 day or the day after Mr. Engle sent this e-mail? Do you

4 remember one?

5 A. I don't remember one, no.

6 Q. On the top of this exhibit, your e-mail here,

7 Tuesday, October 1st, 6:24 p.m., where you have referenced

8 that you passed along a letter of Chris over the weekend, is

9 that the letter that ultimately became the letter we have

10 here in Exhibit 97?

11 A. Yes.

12 MR. FERGUSON: Let's mark the next exhibit

13 here, 102. Tom, this is an e-mail from Doug Engle to

14 Mr. Day, dated Thursday, October 3rd, 2013, time stamped

15 12:25 p.m., subject line, "Re: ECRR one-pager."

16 (Exhibit 102 marked for

17 identification.)

18 MR. PASCHALIS: Okay, got it.

19 Q. Mr. Day, will you just take a moment to look over

20 this document. This is one of the documents you sent me

21 today, but, looking at the contents of this e-mail, do you

22 recognize this correspondence?

23 A. I do, yeah.

24 Q. I want to look at the second page. The top line

25 says, "We have plenty of support and hope we can get Agg West

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DAY/Ferguson 40

1 and Smokey PT to join us." Do you know what Smokey PT is?

2 A. That's Smokey Point Concrete. And they were

3 talking about, I think, if they could get their yard they

4 were thinking of getting in Bellevue, that they would like a

5 concrete company. And so I think I gave -- at one point gave

6 Doug a phone number to a guy that works at Smokey Point

7 Concrete. I don't know if anything ever came of it. I've

8 never heard from them or whatever, but they were thinking

9 aggregates and concrete in the yard at the end of line would

10 be a good idea.

11 Q. Do you know if Smokey Point currently has a

12 facility in Bellevue?

13 A. No, they don't. No. They are a small company. So

14 I just know a guy that works there and gave them his phone

15 number to see if he was interested.

16 Q. Then I want to take a look at the third page here

17 of Exhibit 102, and I also want to give you a copy of what we

18 have marked as Exhibit 96. So, looking at the third page of

19 Exhibit 2, do you recall reviewing this table? And so the

20 record is clear, what we are looking at is a table document

21 that is titled at the top, "Ballard Terminal Railroad Company

22 STB reactivation letters filed as of 2013 September 30th."

23 Is that the page you are looking at?

24 A. Yeah.

25 Q. When you received these e-mails from Mr. Engle that

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1 are part of this exhibit, do you recall looking at this

2 table?

3 A. Yeah, I glanced at it.

4 Q. So, over in the right-hand column, there are two

5 columns under the heading, "Annual car count." Do you see

6 that?

7 A. Yes.

8 Q. Then, down in the lower, left-hand corner, there

9 are a number of companies under the row titled, "Reactivation

10 freight customers"; do you see that?

11 A. Yeah.

12 Q. At the bottom of that list it states, "Aggregates

13 West letter pending."

14 A. Yeah.

15 Q. Then, if you follow that row over to the right-hand

16 two columns, underneath "Annual car count," there are two

17 numbers that read "300" under the column titled "Initial,"

18 and "550" under the column titled "Long-term."

19 A. Sure.

20 Q. Do you have an understanding of what those numbers

21 are?

22 A. I think that was the amount of cars that Doug was

23 saying that, a conservative number for how much aggregate we

24 could ship to Bellevue. So, I believe, and if I remember

25 right, I believe that a car holds 100 tons of material. So

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1 300 cars would be 30,000 tons a year.

2 Q. Sorry, I didn't mean to interrupt you.

3 A. No, go ahead.

4 Q. Are these numbers that you provided today

5 Mr. Engle?

6 A. No. No, they're not. Okay, so where these numbers

7 came from, I'm not 100 percent sure, but I know that he had

8 some sort of documentation or somebody came up with a number

9 of how much material would be coming and going out of

10 Bellevue at one point, because there's a lot of work that's

11 coming up in Bellevue. There's going to be a lot of cranes

12 in Bellevue, a lot of new work coming up. And he said,

13 "Well, how much could you ship to downtown Bellevue?" I

14 mean, I do 30 to 60,000 tons a month. I mean, 30,000 tons to

15 Bellevue in a year, that's a pretty conservative number, if

16 the shipping has got the right number on it and whatnot. It

17 just depends on supply and demand and the amount you can sell

18 your material for, right? So, if the shipping can be less

19 and you can get a better share of the market because you can

20 reduce the cost of your material, then, easily, I could sell

21 30,000 tons a year, conceivably.

22 Q. I understand conceivably, but do you right now have

23 any contracts to necessarily ship this amount, 300 carfuls of

24 material to Bellevue?

25 MR. PASCHALIS: I will object to the form.

Page 43	Page 45
DAY/Ferguson 43 1 A. What does that mean? Just keep going? 2 Q. He is just doing it for the record. You can 3 answer. 4 MR. PASCHALIS: You can answer, sir. 5 A. Yes. Easily, I can ship that much material to 6 Bellevue. It depends on my cost of shipping, whether I would 7 do it through rail or not. I mean, we easily do that much 8 material in Bellevue and Seattle. And, from the Bellevue 9 area, you can branch out to Redmond; Seattle; Kirkland. So, 10 if you can get the material down to downtown Bellevue cheaper 11 than you could by trucking it, then you would have an 12 advantage in the market. So, conceivably, if it was cheaper 13 to get it to downtown Bellevue, I could easily sell that 14 amount of material. 15 Q. So then is it your understanding -- take a look at 16 Exhibit 96. It is there to the right. I will represent to 17 you that this is the reactivation letters filed table that 18 was actually submitted with Ballard's filing. And you see 19 down in the bottom, left-hand corner here where it mentions 20 Aggregates West, and then, if you follow the row over to the 21 right, it has an initial car count of 300 and a long-term car 22 count of 550. And those numbers are the same as those that 23 appear on the third page of Exhibit 102, correct? 24 A. Yeah. 25 Q. So we were just discussing how these numbers were	DAY/Ferguson 45 1 3 million tons a year of aggregates. So, if you can get your 2 price down low enough and you're in spec, you can conceivably 3 sell as much as you wanted to. So I don't know. I don't 4 know how to answer that question I guess. It's about supply 5 and demand and market price. 6 MR. FERGUSON: Tom, the next exhibit we are 7 going to mark is 103. It's an e-mail from Doug to Scott, 8 sent Sunday, October 6th, 2013, time stamped 5:29 p.m. 9 (Exhibit 103 marked for 10 identification.) 11 MR. PASCHALIS: Okay. Did you say we were on 12 103? 13 MR. FERGUSON: Yes, 103. 14 MR. PASCHALIS: Okay, go ahead. 15 Q. Mr. Day, if you could just take a moment to 16 familiarize yourself with this e-mail and the attachments 17 here that have been marked as Exhibit 103. Are you familiar 18 with this e-mail and the three pages that are attached to it? 19 A. Yeah. 20 Q. So I will look at the e-mail quick on the first 21 page. It reads, "Scott, here are some additional diagrams 22 regarding the Bellevue Target site. I think we want to keep 23 these confidential so our government doesn't try to sink us. 24 I sincerely hope that we can get the necessary meetings 25 together for the week of the 14th." So I want to ask you
Page 44 DAY/Ferguson 44 1 derived. Is it your understanding that these numbers are 2 derived based on assumptions, although albeit in light of 3 your current and past business performance, assumptions about 4 total volume of materials shipped and then converting that to 5 some sort off rail-car basis? 6 MR. PASCHALIS: I will just object to the 7 form. You can answer, Mr. Day. 8 A. I'm not sure what you are asking. Can you repeat. 9 Q. I am just trying to understand how we get from the 10 volume of material you ship to any particular car count. I 11 am just trying to understand where the number comes from. 12 A. Well, like I said, I didn't come up with the 13 number. It was basically, hypothetically, how much do you 14 think you could ship down there. I mean, we send out I think 15 320,000 tons out of the Monroe area to King County and 16 Snohomish County in a year. It's not inconceivable that we 17 would be able to send out 50 or 1,000 tons from downtown 18 Bellevue out to anything within 20, 30 miles fairly easily. 19 So, I mean, it's all hypothetical at this moment, right? 20 But, if it was cheaper to get the material from A to Z and 21 then you can send it out from there, that was the whole point 22 right? I mean, you can sell to downtown Seattle and 23 Bellevue, with all the work that's going on in the next few 24 years, you could sell 500,000 tons, if you can get your price 25 down low enough, right? I mean, this area, King County uses	Page 46 DAY/Ferguson 46 1 about that first sentence. Do you have an understanding of 2 what Mr. Engle means by the Bellevue Target site? 3 A. I believe that's the -- well, no -- I think he 4 was -- no, I don't. Oh, yeah, actually, I think, I believe, 5 that's what he was talking about as the site they would use 6 to use as a laydown yard, I believe. 7 Q. Okay, good, you have me there, and we are going to 8 get to that map on page 3 in a second, but the word "Target" 9 here, it is not your understanding that it is the retail 10 chain, correct? 11 A. You know, I don't know what that site is. I have 12 no idea. 13 Q. I do not know if I was clear in that earlier 14 question. 15 A. I don't believe it's the retail chain, no. I don't 16 know. 17 Q. So let's look at page 3. Is it fair to say that 18 this is a map of which you have been referring to as the end 19 of the line down in Bellevue? 20 A. Yeah. I mean, I've heard the General Mills site; 21 the Target site. I've heard those words. 22 Q. I want to ask you about this, and you've seen this 23 map before today, right? 24 A. Yeah. I think I got it quite a while ago. I got a 25 lot of stuff that, until I get some concrete numbers, sure, I

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1 Q. When Mr. Marcuse was asking a question about the
2 size of companies like CalPortland being one of the largest
3 in the region, and, when he mentioned Aggregates West, you
4 chuckled a little bit.

5 A. Oh, yeah. Well, you can't compare Aggregates West
6 to CalPortland. They're the big beast, so we pale compared
7 to them, but we do a fair amount.

8 MR. WAGNER: That is it.

9 MR. FERGUSON: Tom, it is all yours.

10 MR. PASCHALIS: Sure.

11

12 EXAMINATION

13 BY MR. PASCHALIS:

14 Q. Mr. Day, once again, my name is Tom Paschalis, and
15 I represent Ballard Terminal Railroad and Eastside Community
16 Rail in this proceeding. I want to just generally talk about
17 the nature of the work that you do. What is the purpose of
18 aggregate? So, in other words, how is it used?

19 A. We use it for, like I said before, we use it for
20 really everything, from pipe bedding, to road base, to
21 structural fill for buildings, to anything that you need --
22 fill sites and rebuilding beaches, everything, whatever you
23 can think of, rocks for structural walls.

24 Q. You have listed a number of activities that it
25 would be used in. Is it fair to say that, wherever there are

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1 construction projects, that aggregates is needed?

2 A. Absolutely.

3 Q. Currently, you are sending a good amount of
4 aggregate down to the Bellevue area; is that correct?

5 A. Yeah, we have projects in Bellevue.

6 Q. And then you also mentioned Kirkland?

7 A. Yeah, Kirkland, Redmond, downtown Seattle. King
8 County is our -- our Monroe facility, we focus on King
9 County. My Granite Falls facility, I focus on the Everett
10 area, Snohomish County.

11 Q. Would you characterize the number of construction
12 projects in the Bellevue area as increasing?

13 A. Oh, yeah. Yeah, Bellevue is going to be booming.
14 I have heard rumor of eight or nine more cranes going up this
15 year, maybe the next two years, but I don't know the numbers.

16 Q. So you would characterize it as construction boom
17 at the moment?

18 A. I hear a rumor that we are going to continue to
19 have more construction in Bellevue, yeah.

20 Q. It's growing?

21 A. Yeah, it's growing.

22 Q. How about Kirkland?

23 A. There is a few things going on. I'm supplying the
24 Google site in Kirkland right now. I don't think I have
25 heard about as much growth in Kirkland as Bellevue, but,

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1 obviously, there is the 405 being widened and things like
2 that, but those projects are almost over. My focus isn't as
3 much on Kirkland.

4 Q. As you indicated earlier, it would appeal to you to
5 have the opportunity to send aggregates down to Bellevue by
6 rail, correct?

7 A. Yeah. I mean, conceptually, you know, if I could
8 put aggregates in downtown Bellevue, or in that area, not
9 downtown, but it gives you a bigger slice of the market for
10 Seattle and wherever. Yeah, if I can get cheap aggregates
11 down to Bellevue, I'm interested. Who wouldn't be?

12 Q. Go ahead, sir.

13 A. Oh, that's all.

14 Q. If you had a laydown yard in Bellevue, you would
15 also be able to transport the aggregate that is shipped down
16 there to projects, not just in Bellevue, but also in Kirkland
17 and other nearby areas?

18 A. Yes.

19 Q. And that's an attractive option, as well?

20 A. Absolutely, yeah, for the right price, of course.

21 Q. Now, you said that that would have the potential to
22 increase your markets, and I kind of just want to have you
23 discuss a little bit what you mean by that and specifically
24 what the benefits of having this rail option would be.

25 A. Well, if you look at aggregate markets, basically,

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1 it is pendulant on the trucking, whether or not it's worth it
2 to go after certain markets. You basically draw a circle
3 around a pit within a 50-mile radius, and that's kind of your
4 market because without -- because trucking at 120 bucks an
5 hour, I don't even look at anything more than 50 miles away
6 from my pit. So, if I can transport material to a laydown
7 yard for let's say 25 percent of the cost, then that just
8 widens the circle that I can sell from. Does that make
9 sense?

10 Q. Yes, it does. And would that make your business
11 enterprise more profitable?

12 A. Sure. Well, if we can have a -- it's pendulant on
13 the costs of moving the aggregate and then double handling
14 it, but, if it pencilled out and you could do it cheaper,
15 sure, yes.

16 Q. Now, there has been questions on several occasions
17 that you currently do not move any product by rail to any
18 customers, correct?

19 A. No.

20 Q. Someone asked you whether any one of your customers
21 currently asks you to move product by rail.

22 A. Yeah, nobody has asked.

23 Q. But you understand that the rail line between
24 Woodinville and Bellevue is not currently active, correct?

25 A. Well, I'm a little bit confused about that because

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1 I think they had a little railcar drive up and down it a
 2 couple months ago, but I don't think it's an active line. I
 3 don't know. I don't know. The answer is I don't know.
 4 Q. Do you know who had a railcar going up and down it?
 5 A. No.
 6 Q. Well, I will represent to you that the purpose of
 7 this reactivation proceeding is for Ballard Terminal Railroad
 8 Company to obtain the reactivation rights to the Woodinville
 9 to Bellevue segment of this line and reinstitute rail service
 10 currently, and there is no current rail service at this time.
 11 A. Okay.
 12 Q. So, that being the case, you would not be capable
 13 at this moment of moving any aggregate by rail to Bellevue,
 14 correct?
 15 A. No.
 16 Q. It is not an option at this time, correct?
 17 A. Not that I know of.
 18 Q. But, if the Surface Transportation Board provides
 19 Ballard the right to reinstitute freight rail service from
 20 Woodinville to Bellevue, then you would be capable of
 21 accessing Bellevue, correct?
 22 MR. FERGUSON: Objection; calls for
 23 speculation.
 24 Q. You can answer.
 25 A. Yeah, I mean, sure.

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1 Q. That is your understanding from your conversations
 2 with Mr. Engle and Mr. Wilson, isn't it?
 3 A. Yes. Yeah.
 4 Q. Now, there has been some testimony that there
 5 hasn't been a comprehensive cost analysis of what it would
 6 take to ship aggregates down to Bellevue; do you recall that?
 7 A. Yes.
 8 Q. But, given the fact that there isn't even an active
 9 rail line to Bellevue, don't you think it would be premature
 10 to have any figures exchanged?
 11 A. Of course.
 12 Q. And, certainly, if the rail line is reactivated and
 13 Ballard is provided the opportunity to start running freight,
 14 at that time it would make sense to go ahead and start
 15 discussing the rates and evaluating the cost benefits at that
 16 time, correct?
 17 A. Yes.
 18 Q. And you would be interested in doing so at that
 19 time?
 20 A. Yes, I would be interested to see if we could save
 21 money.
 22 Q. I know that is not to overlook the fact that you
 23 and Mr. Engle, as you have testified, have had some
 24 discussions and that you have requested a rate quote, but
 25 those discussions would become more involved, wouldn't they?

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1 A. Certainly, yeah, if you got the line activated, we
 2 would talk about it.
 3 Q. How long has Aggregates West been around?
 4 A. I don't know. I think about 23, 24 years. I don't
 5 know. I'm not sure.
 6 Q. Is Aggregates West growing?
 7 A. Currently, no.
 8 Q. When you ship by truck, who pays for the trucks?
 9 A. The customer.
 10 Q. And do the customers own trucks?
 11 A. Sometimes. Sometimes we find trucking for them.
 12 Q. So, in those instances when you say find trucking,
 13 what do you mean?
 14 A. Well, Aggregates West has five of its own trucks,
 15 which is certainly not enough to do large jobs, but we will
 16 do small ones, and then, if we do something where we need 30,
 17 40 trucks, we'll talk to trucking companies and connect them
 18 with the customer, or we will hire the trucking companies
 19 ourselves.
 20 Q. So, if you started shipping down to Bellevue by
 21 rail and in turn that had the effect of shipping by truck a
 22 little bit less, that would mean less efforts for you guys to
 23 arrange for trucks, correct, in the instances that you do?
 24 A. No, not really. You're still going to have to
 25 arrange trucks to take it from a yard in Bellevue, right? So

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1 you're still arranging trucking; it's just the trucking is
 2 going to, hopefully, for jobs in Bellevue and Redmond and
 3 whatever, the trucks are going to be traveling less. So,
 4 hopefully, you're going to save, you have a cost savings
 5 there, but you are still going to have to arrange the same
 6 amount of trucks. A truck holds 31 tons whether it goes
 7 100 miles or 5 miles.
 8 Q. So you would have to engage in the efforts, but the
 9 volume of trucks you would be using would be less, is what
 10 you are saying?
 11 MR. FERGUSON: Objection; vague.
 12 A. Well, actually, yes. Because, if you have a truck
 13 on the road for 15 minutes, as opposed to an hour, it's going
 14 to be able to make more trips, so, yeah, you would hire less
 15 trucks.
 16 Q. And, as you said earlier, that would have a cost
 17 benefit?
 18 A. I don't know. I don't know. If the handling to a
 19 yard from a railroad and then into a truck has a cost
 20 benefit, I don't know that yet. We're working on the
 21 assumption that it would.
 22 Q. Why are you working under that assumption?
 23 A. What do you mean?
 24 Q. Well, you said that you are working under the
 25 assumption that it would have a cost benefit.

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1 Q. Okay.

2 A. And then we would have to truck it to that spur.

3 Q. Is that what you discussed with Mr. Engle and

4 Mr. Wilson?

5 A. We didn't really discuss where we would load from

6 in Monroe or anything.

7 Q. But that would be the plan to figure that out?

8 A. Yeah. I mean, you would either load in Monroe, or,

9 if there was an easier access in Snohomish, maybe you would

10 truck it up to Snohomish. I don't know.

11 Q. But, in either event, whether it is constructing a

12 rail spur in Monroe or trucking it up to Snohomish, if you

13 found it to be cost-effective to ship aggregate down to

14 downtown Bellevue, you would figure out a way to access the

15 line, wouldn't you?

16 A. Absolutely.

17 Q. And I imagine that you would look at that more

18 seriously if and when the rail line from Woodinville to

19 Bellevue gets reactivated, correct?

20 A. Yeah. I mean, we're going to look at all of our

21 options for shipping, if there is a viable option.

22 Q. Now, I know at the outset you and Mr. Ferguson had

23 indicated that you had had some communications prior to

24 sitting down today; do you recall that conversation?

25 A. Yes.

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1 Q. What was the first point that Mr. Ferguson or

2 anyone from Mr. Ferguson's office contacted you?

3 A. What was the first point, like the first date?

4 Q. Yes, please.

5 A. Well, I couldn't give you an exact date. It was

6 last week sometime. I don't remember what day.

7 Q. What was the method of communication on that

8 occasion?

9 A. He had called me, and I don't remember if I called

10 him or -- but he had e-mailed me with my subpoena, and I

11 don't recall if I called him or he called me. I think we had

12 some questions about what he wanted as far as the subpoena

13 went, and then he explained to me that, yeah, e-mails were

14 relevant and stuff because it dawned on me that I had some

15 e-mails from Doug. And then there was nothing in the company

16 files that Chris had sent the letter, and so it dawned on me

17 that I had some e-mails, and I believe I called to ask him a

18 question, but I can't remember if I called you, or did you

19 call me?

20 MR. FERGUSON: I don't get to answer.

21 A. Yeah, so it was just basically asking some basic

22 questions about the subpoena, so --

23 Q. And what were those questions?

24 A. Well, Chris had written a letter stating that we

25 didn't have any relevant material to give the subpoena that

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1 they were looking for, which was true because there was

2 nothing in the server at Aggs West. And I called to ask him

3 if e-mails were relevant, and he said, yeah, I need all your

4 e-mails, as well.

5 Q. So he advised you that you should produce e-mails?

6 A. Yes.

7 Q. Did you discuss anything else?

8 A. No, not really. I remember asking him a couple

9 questions about what this was about and whatnot, and he kind

10 of gave me a brief overview of, you know, its about the

11 reactivation of the line and that kind of stuff, just --

12 that's all, nothing major.

13 Q. Was there any discussion about the type of

14 questions that you would be receiving in your deposition?

15 A. No. No, not really.

16 Q. Did Mr. Ferguson ever discuss the prospect of

17 signing a declaration or affidavits with you?

18 A. Yeah, that was discussed. He said that instead of

19 coming in to this deposition I might be able to do a

20 declaration anyway. I discussed that with Chris Hatch, and

21 Chris said, "Well, you got to go in and sign a declaration

22 anyway; you might as well go in for the deposition," so we

23 just decided to do it this way.

24 Q. So the issue was first raised by Mr. Ferguson?

25 A. What was that?

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1 Q. So the prospect of signing a declaration in lieu of

2 having your deposition taken was first raised by

3 Mr. Ferguson?

4 A. Yes. I mean, I didn't know that was an option

5 until he brought it up.

6 Q. But, ultimately, you decided not to do that,

7 correct?

8 A. Correct.

9 Q. Did you discuss what the declaration would say?

10 A. No. As a matter of fact -- yeah, no, I didn't.

11 Q. Other than advising you that declaration was

12 another option, did you discuss anything else with respect to

13 the declaration?

14 A. No.

15 Q. Did Mr. Ferguson give you his opinion on whether a

16 declaration would be preferable?

17 A. No. He just said it was an option if it would be a

18 better use of my time.

19 Q. A better use of your time?

20 A. Yeah, instead of coming in for a big, long

21 deposition.

22 Q. Pretty early on in your deposition, you discussed

23 the circumstances that Aggregates West is currently dealing

24 with, and, by that, I mean the receivership that it is

25 currently under.

Page 75	Page 77
DAY/Paschalis 75 1 Q. Okay. 2 A. And then we would have to truck it to that spur. 3 Q. Is that what you discussed with Mr. Engle and 4 Mr. Wilson? 5 A. We didn't really discuss where we would load from 6 in Monroe or anything. 7 Q. But that would be the plan to figure that out? 8 A. Yeah. I mean, you would either load in Monroe, or, 9 if there was an easier access in Snohomish, maybe you would 10 truck it up to Snohomish. I don't know. 11 Q. But, in either event, whether it is constructing a 12 rail spur in Monroe or trucking it up to Snohomish, if you 13 found it to be cost-effective to ship aggregate down to 14 downtown Bellevue, you would figure out a way to access the 15 line, wouldn't you? 16 A. Absolutely. 17 Q. And I imagine that you would look at that more 18 seriously if and when the rail line from Woodinville to 19 Bellevue gets reactivated, correct? 20 A. Yeah. I mean, we're going to look at all of our 21 options for shipping, if there is a viable option. 22 Q. Now, I know at the outset you and Mr. Ferguson had 23 indicated that you had had some communications prior to 24 sitting down today; do you recall that conversation? 25 A. Yes.	DAY/Paschalis 77 1 they were looking for, which was true because there was 2 nothing in the server at Aggs West. And I called to ask him 3 if e-mails were relevant, and he said, yeah, I need all your 4 e-mails, as well. 5 Q. So he advised you that you should produce e-mails? 6 A. Yes. 7 Q. Did you discuss anything else? 8 A. No, not really. I remember asking him a couple 9 questions about what this was about and whatnot, and he kind 10 of gave me a brief overview of, you know, its about the 11 reactivation of the line and that kind of stuff, just -- 12 that's all, nothing major. 13 Q. Was there any discussion about the type of 14 questions that you would be receiving in your deposition? 15 A. No. No, not really. 16 Q. Did Mr. Ferguson ever discuss the prospect of 17 signing a declaration or affidavits with you? 18 A. Yeah, that was discussed. He said that instead of 19 coming in to this deposition I might be able to do a 20 declaration anyway. I discussed that with Chris Hatch, and 21 Chris said, "Well, you got to go in and sign a declaration 22 anyway; you might as well go in for the deposition," so we 23 just decided to do it this way. 24 Q. So the issue was first raised by Mr. Ferguson? 25 A. What was that?
Page 76	Page 78
DAY/Paschalis 76 1 Q. What was the first point that Mr. Ferguson or 2 anyone from Mr. Ferguson's office contacted you? 3 A. What was the first point, like the first date? 4 Q. Yes, please. 5 A. Well, I couldn't give you an exact date. It was 6 last week sometime. I don't remember what day. 7 Q. What was the method of communication on that 8 occasion? 9 A. He had called me, and I don't remember if I called 10 him or -- but he had e-mailed me with my subpoena, and I 11 don't recall if I called him or he called me. I think we had 12 some questions about what he wanted as far as the subpoena 13 went, and then he explained to me that, yeah, e-mails were 14 relevant and stuff because it dawned on me that I had some 15 e-mails from Doug. And then there was nothing in the company 16 files that Chris had sent the letter, and so it dawned on me 17 that I had some e-mails, and I believe I called to ask him a 18 question, but I can't remember if I called you, or did you 19 call me? 20 MR. FERGUSON: I don't get to answer. 21 A. Yeah, so it was just basically asking some basic 22 questions about the subpoena, so -- 23 Q. And what were those questions? 24 A. Well, Chris had written a letter stating that we 25 didn't have any relevant material to give the subpoena that	DAY/Paschalis 78 1 Q. So the prospect of signing a declaration in lieu of 2 having your deposition taken was first raised by 3 Mr. Ferguson? 4 A. Yes. I mean, I didn't know that was an option 5 until he brought it up. 6 Q. But, ultimately, you decided not to do that, 7 correct? 8 A. Correct. 9 Q. Did you discuss what the declaration would say? 10 A. No. As a matter of fact -- yeah, no, I didn't. 11 Q. Other than advising you that declaration was 12 another option, did you discuss anything else with respect to 13 the declaration? 14 A. No. 15 Q. Did Mr. Ferguson give you his opinion on whether a 16 declaration would be preferable? 17 A. No. He just said it was an option if it would be a 18 better use of my time. 19 Q. A better use of your time? 20 A. Yeah, instead of coming in for a big, long 21 deposition. 22 Q. Pretty early on in your deposition, you discussed 23 the circumstances that Aggregates West is currently dealing 24 with, and, by that, I mean the receivership that it is 25 currently under.

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1 because our competitors have closer sources to bring in to
2 their laydown yards. Cadman is already established in
3 Redmond. CalPortland has stuff right there in Lake
4 Washington, and they're able to barge their material in, so
5 obviously it makes sense for them. But, for us to truck
6 material, we would have to have a cheaper way to transport to
7 create a laydown yard and be able to be competitive with our
8 competition. The question is: Can you double handle the
9 material and rail it and have it be cost-effective? I don't
10 know.

11 Q. That is the open question?

12 A. That's the million dollars question I guess sitting
13 here in the room.

14 MR. MARCUSE: Thank you.

15

E X A M I N A T I O N

17 BY MR. WAGNER:

18 Q. Just to follow up a little bit on that, so the
19 assumptions are, if you are going to do this sort of laydown
20 facility and Monroe and Bellevue --

21 MR. WAGNER: Sorry, Tom, can you hear me?

22 MR. PASCHALIS: Yes, if you don't mind, speak
23 up a little bit, please.

24 Q. So you would load a truck in Monroe at your
25 facility, then you would empty the truck at a laydown in

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1 Monroe, presumably near the railroad track, then you would
2 load the train, and then unload the train in Bellevue at a
3 laydown facility in Bellevue, and then load the truck, load a
4 truck in Bellevue, and then unload the truck at a site?

5 A. Yeah.

6 Q. The work site.

7 A. Yeah.

8 Q. And this would be on property that presumably
9 Aggregates West would buy or lease in Monroe and in Bellevue?

10 A. Correct.

11 Q. So I am going to represent to you that on Bing
12 maps, I just typed in Monroe and Bellevue, Washington, and it
13 says it is 24.1 miles between Monroe and Bellevue. Does that
14 sound about right?

15 A. Mm-hmm.

16 Q. So, based on the distance from Monroe to Bellevue,
17 is it likely the extra steps of unloading the truck at a new
18 facility that you guys have to buy or lease in Monroe, then
19 loading a train, paying for the train, unloading the train at
20 another facility that you have to buy or lease in Bellevue,
21 and then loading it again onto another truck, those are the
22 added steps other than just loading the truck at your
23 facility and delivering to a work site in Bellevue, does it
24 seem likely that that would be cheaper than just loading it
25 at your site and driving it to a site in Bellevue?

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1 MR. PASCHALIS: I will object to the form.

2 A. Well, first of all, I'm not sure, so the honest
3 answer is I'm not sure. They do it all the time with barging
4 and things like that where they're double and triple
5 handling, like you're talking about. And it seems to work
6 for CalPortland there right off of Lake Washington, the
7 Kenmore area, and stuff like that. It does seem very
8 expensive. We were shipping stuff from Lumi. You know, you
9 load it onto a barge, you scoop it up, take it off the barge,
10 put it in the pit, and then put it in the truck and take it
11 to the place and unload it again. It does work if the
12 shipping is cheap enough. It has worked with barging. The
13 railroads obviously do it with their own material; they'll
14 double handle it. There's a lot of ways to use conveyor
15 systems to go right from the truck into a railcar or onto a
16 barge or whatever. So there is just a lot of work that would
17 go into coming up with what that cost would be. And so the
18 honest answer is I don't know. Having a yard in Bellevue
19 would be beneficial to us. People would come pick up their
20 own material and stuff if we could get the cost point to
21 where it's cheaper for them to go there instead of drive out
22 to Redmond or go over to Kenmore. So that's the
23 million-dollar question, right?

24 Q. Are you aware of any properties in Bellevue that is
25 zoned properly for you to be able to use as a laydown

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1 facility?

2 A. No.

3 MR. PASCHALIS: I will object to the extent
4 that that calls for a legal conclusion.

5 A. I am not aware of any place that we could use as a
6 laydown yard, no.

7 MR. WAGNER: That is it.

8 Tom?

9 MR. PASCHALIS: Sure.

10

E X A M I N A T I O N

12 BY MR. PASCHALIS:

13 Q. When you first started discussing the point of
14 shipping from your Monroe yard to Bellevue with Mr. Engle,
15 you were aware certainly that the Monroe yard is not directly
16 on a rail line, correct?

17 A. Correct.

18 Q. And yet, in discussing it with Mr. Engle, you
19 didn't turn him away; you, in fact, continued communicating
20 with him and had some discussions about how to do this,
21 correct?

22 A. Yeah.

23 Q. So you understood that you did not need to be
24 located exactly adjacent to a rail line in order to figure
25 out a way to get your aggregates down to downtown Bellevue,

Page 103	Page 105
DAY/Paschalis 103 1 correct? 2 A. Yeah. 3 Q. There was some discussion about double loading, and 4 I take that to mean having a laydown yard somewhere near the 5 rail line in Monroe and then, of course, a laydown yard in 6 Bellevue, correct? 7 A. Yeah, where you would, instead of just loading it 8 into a truck and taking it directly to a job site, you're 9 taking it to -- you are loading it in a truck, taking it to 10 the railroad, loading it into a railcar, loading it off a 11 railcar and into a yard at Bellevue, which one of the 12 discussions we had was about the possibility of having a 13 concrete plant there, which would be -- that would mean your 14 aggregate would go directly to the concrete, and then you're 15 not double handling it. There's a lot of hypothetical 16 possibilities. I've never heard of a place on the rail line 17 that we could use, though, if that's what you're asking. 18 Q. So, from what you are saying, there is a lot of 19 options? 20 A. I don't know options. Basically, the bottom line 21 is, if you can figure out how to get the stuff onto a 22 railcar, downtown Bellevue, for cheaper than I can truck it, 23 then we're all ears. 24 Q. Certainly. Certainly. 25 A. But I don't know where you would do that from.	DAY/Paschalis 105 1 and I know Cadman has a facility out there in Goldbar, and I 2 believe Scarcella does, as well. 3 Q. Do you know whether their yards are adjacent to 4 that line? 5 A. Yeah, they're right -- they're close, yeah. I 6 don't know if they have a spur into their yards or not, but I 7 know they're right on Highway 2, which is where the line 8 runs. They are hard rock quarries, the both, the two of 9 them. 10 Q. Does the line run adjacent to Highway 2 west of 11 Monroe? 12 A. Yes. Well, I'm sorry, hold on a minute. Yeah, it 13 splits off of Monroe, and Snohomish sits between the line and 14 Highway 2, it looks like from the map. So in Monroe the line 15 comes together on the east side of Monroe, and then, when 16 you're going west, it V's out from Highway 2, yeah. 17 Q. Now, I believe Mr. Ferguson asked you with respect 18 to Exhibit Nos. 106 and 108 whether you were aware of any 19 spots for a laydown yard within those two images; do you 20 recall that? 21 A. Right. Yeah. 22 Q. But, certainly, it would be possible that there are 23 acceptable laydown spots outside of the area depicted in 24 those two exhibits, correct? 25 MR. FERGUSON: Objection; calls for
Page 104	Page 106
DAY/Paschalis 104 1 Q. Now, just simply with respect to double loading, 2 you said some of your competitors engage in that practice, 3 correct? 4 A. Yeah. 5 Q. I would then presume that they do that because they 6 found it to be a cost-effective way to ship, correct? 7 A. I would assume so. They do quite well at their 8 yards, so -- 9 Q. So double loading, in and of itself, doesn't 10 necessarily mean higher expense, correct? 11 A. No, it does mean higher expense, but you can sell 12 your aggregate for a higher price the further you get away 13 from pits. So, again, you have to be able to figure out how 14 to make it work and compete with the guy next door, right? 15 Q. Just so I understand you correctly, you might have 16 higher expenses, but also that might increase your market and 17 your profits? 18 A. Yes. 19 Q. And that would be a good thing, correct? 20 A. It would be a good thing if we could increase our 21 profit, sure, and our markets. 22 Q. Did I hear you say that there are competitors of 23 yours that load onto the BNSF line that travels through 24 Monroe? 25 A. Yes, I believe so. I've seen the cars in Goldbar,	DAY/Paschalis 106 1 speculation. 2 A. I really don't know. I haven't -- I haven't 3 identified any. There may be. 4 Q. There may be? 5 A. It's possible. 6 Q. What efforts have you undertaken at this point and 7 up to this point to attempt to identify a laydown yard within 8 the parameters of the land that is depicted in Exhibits 106, 9 and then I will ask you the same question with respect to 10 108? 11 A. I haven't made any effort to identify a laydown 12 yard anywhere. 13 Q. Okay. So you are not aware of any potential 14 laydown yard locations, but you also have not attempted to 15 locate any? 16 A. No, I have not. 17 Q. What I said is correct, right? 18 A. Yes. 19 Q. I just want to be clear, on several occasions 20 throughout this deposition, you made clear, if the line down 21 to Bellevue was reactivated, you would be interested in 22 pursuing and further discussing the potential cost benefits 23 of shipping by rail, correct? 24 A. I'd be interested in discussing with anybody that 25 can ship my material cheaper, yes.

Page 107	Page 109
DAY/Paschalis 107 1 Q. And that would include Ballard and Eastside 2 Community Rail if they are able to operate down to Bellevue, 3 correct? 4 A. Yes. 5 Q. That is even the case if you have to figure out a 6 laydown yard area in the Monroe area, correct? 7 A. If it's cost-effective, yeah. If I can ship my 8 material cheaper, I'll figure out a way to do it. 9 MR. PASCHALIS: Can we take a quick break. I 10 am attempting to locate one more document, and I might have 11 one more question for you. 12 MR. FERGUSON: Sure. 13 (A brief recess was taken.) 14 MR. FERGUSON: Tom, we're back and ready for 15 you. 16 Q. I don't have another document to reference, 17 Mr. Day, but I just want to again go over that your current 18 job duties include selling aggregate and figuring out a way 19 to get it from Point A to Point B, correct? 20 A. Yeah. 21 Q. And those Point B's might be wherever there is 22 construction within a many-mile radius of the areas that we 23 have been discussing today, correct? 24 A. Yes. 25 Q. So you would certainly be able to get aggregates	DAY/Ferguson 109 1 A. I haven't been in them. I have seen the cars 2 loaded with quarry rock near their facilities. 3 Q. But you do not actually have any personal knowledge 4 of their business operations? 5 A. No, I don't. I just made an assumption. 6 Q. Mr. Paschalis has asked you multiple questions 7 about whether you would have continued interest in exploring 8 the option of rail service if Ballard's reactivation petition 9 were granted; do you recall those questions? 10 A. Yep. 11 Q. Is it fair to say that it is just that, you are 12 interested in knowing whether there is a viable option for 13 rail service? 14 A. Yeah. 15 Q. Okay. Is it also fair to say that, even if 16 Ballard's petition for reactivation were granted, it is 17 uncertain whether Aggregates West could or would utilize such 18 rail service? 19 A. Yeah, it's uncertain. 20 MR. FERGUSON: No more questions. 21 MR. PASCHALIS: Anyone else? 22 MR. MARCUSE: I'm debating. No, I have 23 nothing further. 24 MR. FERGUSON: Mr. Wagner? 25 MR. WAGNER: I have none.
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DAY/Ferguson 108 1 from the Monroe yard as depicted in 107 to a point along the 2 rail line that we have been discussing if you had a laydown 3 yard, correct? 4 A. Yeah, if it made financial sense, yes. 5 MR. PASCHALIS: Okay. That is all I have. 6 7 EXAMINATION 8 BY MR. FERGUSON: 9 Q. Two quick follow-up topics. Mr. Day, Mr. Paschalis 10 asked you about some competitors to the east of your Monroe 11 yard off Highway 2 near Goldbar, correct? 12 A. Yeah. 13 Q. And those are Cadman and another company called 14 Scarcella; is that right? 15 A. Yeah, I believe Scarcella is leasing a pit just 16 east of Cadman's. I haven't been there myself, but -- 17 Q. Have you been to either of those two facilities you 18 have described? 19 MR. PASCHALIS: Asked and answered. 20 A. I haven't been in them, but -- 21 Q. Hang on. 22 MR. FERGUSON: Go ahead, Tom. 23 MR. PASCHALIS: I just made an 24 asked-and-answered objection. 25 Q. Continue.	DAY/Paschalis 110 1 MR. FERGUSON: None here, Tom. 2 EXAMINATION 3 BY MR. PASCHALIS: 4 Q. The only one I've got is: As you've testified to 5 previously, if the line is reactivated and there is a 6 cost-efficient proposal to ship through Ballard down to 7 Bellevue, you would be interested in doing so, correct? 8 A. Oh, through Ballard? 9 Q. Through Ballard to Bellevue. 10 A. Yes. If I could ship my material cheaper, I would. 11 MR. PASCHALIS: That is all I have. 12 MR. FERGUSON: All right. We are done here. 13 MR. PASCHALIS: Thank you very much for coming 14 in, Mr. Day. 15 THE WITNESS: Thank you. 16 (Signature waived.) 17 (Deposition concluded at 4:31 p.m.) 18 19 20 21 22 23 24 25

EXHIBIT 14

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731)
 BALLARD TERMINAL)
 RAILROAD COMPANY, L.L.C.)
-ACQUISITION AND EXEMPTION-)
 WOODINVILLE SUBDIVISION)
)
STB DOCKET NO. AB-6 (SUB. NO. 465X))
 BNSF RAILWAY COMPANY)
-ABANDONMENT EXEMPTION-)
 IN KING COUNTY, WA)
)

Deposition Upon Oral Examination
 of
 JAMES A. HOUSE

Taken at 123 Fifth Avenue
Kirkland, Washington

DATE: February 7, 2014

REPORTED BY: Wade J. Johnson, RPR
 CCR No.: 2574

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1 you are the president of CT Sales?

2 A. Correct.

3 Q. So you would be responsible for making a decision

4 whether to request rail service to your facility?

5 A. That is correct.

6 Q. Have you made that decision at this point?

7 A. No.

8 Q. What process would CT Sales follow in order to make

9 that decision?

10 A. It would be an in-depth cost analysis.

11 Q. Who would perform that cost analysis?

12 A. Well, I would be in charge of it, but I would go

13 out, just like anybody would, and figure out how to do that

14 and assess the cost.

15 Q. Have you taken affirmative steps towards that?

16 A. No.

17 MR. MARCUSE: Thank you. I have no further

18 questions at this time.

19

20 E X A M I N A T I O N

21 BY MR. PASCHALIS:

22 Q. Mr. House, I have some questions. Before I get

23 started, would you like a break, or would you like me to

24 continue?

25 A. No, I'm good. You can continue.

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1 Q. Just a couple quick points. First of all, if I ask

2 you any questions that you do not understand or you think you

3 need clarification, please stop me and let me know, and I

4 will be happy to reask the question. Second of all, since I

5 am not in the room with you I can't really pick up visual

6 cues as to when you are finished talking, so I will endeavor

7 to have a lengthy pause before I ask the next question. If I

8 inadvertently cut you off because I believe that you have

9 finished, I apologize, and I will allow you to go ahead and

10 complete your answer.

11 A. Okay.

12 Q. There was some testimony much earlier on about what

13 exactly rebar, the product that you make, is; do you recall

14 that?

15 A. Sort of.

16 Q. Okay. Well, then I will just ask you the question,

17 and, if you discussed it to some extent already, it might be

18 a little repetitive, but can you just kind of describe to me

19 generally what rebar is and how it is used.

20 A. Reinforcing steel. It basically comes in bars that

21 we cut and shape to fit into concrete for a particular

22 structure on a job site.

23 Q. What kind of structures is rebar used on?

24 A. For the most part, anything that has concrete.

25 Q. So that could be any kind of construction project

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1 then?

2 A. Yes.

3 Q. Such as commercial development projects?

4 A. Yes.

5 Q. And residential development projects?

6 A. Yes.

7 Q. Are there any other categories of projects that you

8 would tend to send rebar to?

9 A. We consider government a different category.

10 Q. Government construction projects?

11 A. Yes.

12 Q. That would include buildings?

13 A. Yes.

14 Q. Would it include anything else in addition to

15 buildings?

16 A. Roadways.

17 Q. Roadways, okay.

18 A. Sound walls; retaining walls.

19 Q. Okay, anything else?

20 A. Not that I can think of.

21 Q. I imagine that these are projects that occur

22 throughout the Seattle and Western Washington area?

23 A. Yes.

24 Q. Now, you were asked a little bit earlier about your

25 understanding of this STB reactivation proceeding; do you

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1 recall that?

2 A. Yes.

3 Q. You were advised that Ballard Terminal Railroad is

4 attempting to reactivate rail service on the line between

5 Woodinville and Bellevue; that is your understanding,

6 correct?

7 A. Yes.

8 Q. And are you aware that Ballard currently operates

9 the segment from Snohomish to Woodinville?

10 A. Yes.

11 Q. I imagine that some of your clients are in the

12 vicinity or in the areas between Snohomish and Bellevue;

13 isn't that correct?

14 A. There are some job sites between Snohomish and

15 Bellevue, yes.

16 Q. Thus, wouldn't it be conceivable that, if rail

17 service were reactivated between Woodinville and Bellevue,

18 that you and your customers would choose to ship by rail?

19 A. That is conceivable.

20 Q. Is it your experience that there are a lot of

21 construction activities going on in the Bellevue area?

22 A. You are asking me if there is continually a lot of

23 construction activity in the Bellevue area?

24 Q. Yes.

25 A. That is my opinion, yes.

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1 Q. And would that also be true for other areas of the
2 rail line between Bellevue and Woodinville?

3 A. Yes.

4 Q. Now, you said that you would be desirous of the
5 opportunity to ship on the line between Snohomish and
6 Bellevue; do you remember that?

7 A. Yes.

8 Q. There are some numbers and information here in your
9 letter here Exhibit No. 83, and, as I recall, according to
10 your earlier testimony, you had supplied that information and
11 discussed it and verified it with Ernie Wilson?

12 A. Yes, Ernie or Doug.

13 Q. Sure. In paragraph 2 you indicate that you
14 processed and shipped about 8,300 tons of finished rebar in
15 the previous year; would that be the year 2012?

16 A. We actually run a fiscal year from April through
17 March, so it would be our fiscal year of 2012.

18 Q. The most recent completed fiscal year?

19 A. Correct.

20 Q. And those were all shipped by truck?

21 A. That is correct.

22 Q. Can you quantify about how many truckloads you
23 would ship per day?

24 A. No, because the trucks going out are not always
25 full loads. We can put an average of 20 tons on a

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1 semi-trailer, but we also have a small pickup, and we have a
2 12-ton flatbed, and we have an 8-ton flatbed, but they don't
3 always go out fully loaded.

4 Q. There was some discussion as to whether it would be
5 more cost-effective to ship by rail versus by truck; do you
6 recall that?

7 A. Yes.

8 Q. Just to be clear, I just want to verify, do you
9 have an understanding of whether or not it would be cheaper
10 to ship by rail or by truck?

11 A. No.

12 Q. You testified earlier that, to some extent, you
13 relied on information from Ernie Wilson regarding that; do
14 you recall?

15 A. Yes.

16 Q. And Ernie had had a discussion with Mr. -- is it
17 Lauber or Lauber?

18 A. Lauber, correct.

19 Q. -- about those rates. Okay. So would you defer to
20 those two on the cost-effectiveness question at this time?

21 A. There is more that's going to go into it than just
22 those numbers, which is why I can't do an analysis of which
23 is going to be cheaper. So it's more than just the freight
24 costs that goes into the total cost.

25 Q. What goes into that then? Can you clarify a little

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1 bit, please.

2 A. Sure. Having, as it says here, 2 1/2 truckloads
3 per railcar. So, to unload one railcar off business hours is
4 less expensive than unloading 2 1/2 truckloads during
5 business hours. So that is one advantage to rail. As those
6 preliminary numbers, which I have not studied, came across,
7 it looks like the actual weight is a little higher to ship
8 per rail, so that's why the overall cost is, without doing an
9 in-depth study, is too hard to determine if trucking or rail
10 is the least expensive at this time.

11 Q. Sure. So there are factors other than pure cost
12 that would favor a desire to ship by rail, if I understand
13 you correctly?

14 A. Correct.

15 Q. I imagine, if you ship by rail, you wouldn't have
16 to do as much maintenance on the trucks?

17 A. That would be correct.

18 Q. Do you do a good amount of maintenance on the
19 trucks currently?

20 A. We do have a standing service person that does a
21 lot of upkeep to the trucks, yes.

22 Q. He keeps pretty busy?

23 A. Yes.

24 Q. Do you have a sense of how much products by railcar
25 you could ship or receive in any given year? Let me break

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1 that up. Let's start with receive.

2 MR. FERGUSON: Objection; calls for
3 speculation.

4 A. I doubt that it would occur, but I could
5 conceivably receive all of my rebar by rail.

6 Q. How much raw rebar material do you currently
7 receive in the course of a given year?

8 A. Well, it's going to be fairly close to the amount
9 that we ship.

10 Q. Which in the most recent completed fiscal year was
11 about 8,300 tons?

12 A. Correct.

13 Q. So it is fair to estimate that you receive
14 approximately 8,300 tons in a given year?

15 A. Approximately.

16 Q. If you were capable of receiving all of that by
17 rail, you would be interested in doing so, wouldn't you?

18 A. I don't know yet.

19 Q. Contingent on your cost analysis?

20 A. Correct.

21 Q. And actually having rail service available to use,
22 correct?

23 A. Correct.

24 Q. If the cost analysis was favorable, in addition to
25 the other factors, then you would want to receive it by rail,

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1 correct?

2 A. Yes.

3 Q. Now, I take it that you are currently aware, based

4 on many of the discussions that we have had today, that the

5 rail line between Bellevue and Woodinville is not currently

6 active?

7 A. That's my understanding.

8 Q. You were asked earlier whether or not you had made

9 any request for service of Ballard; do you recall that?

10 A. Yes.

11 Q. And, if you were to request service, part of that

12 would be for the purpose of receiving your raw rebar,

13 correct?

14 A. Correct.

15 Q. And that, in large part, comes from Oregon to the

16 south, correct?

17 A. Currently, the Oregon mill is my main supplier,

18 yes.

19 Q. What percentage of raw rebar do you get from

20 Oregon?

21 A. I haven't done an accurate analysis, but I would

22 guess 85 percent.

23 Q. So, in order to receive raw rebar from Oregon by

24 rail, you would need rail access to the south, correct?

25 A. I do not know that.

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1 Q. Is it fair to say that the shortest route between

2 where your supply comes from and your plant is to the south?

3 MR. FERGUSON: Objection; vague; calls for

4 speculation.

5 A. McMinville, Oregon is south. So I guess, yeah, as

6 the crow flies, that would be the straightest.

7 Q. Your letter, Exhibit 83, in the third paragraph,

8 where you in the first sentence reference the location of

9 Cascade Steel Rolling Mills, and then in the third sentence

10 you discuss the ability to ship directly via the UP, BNSF,

11 and BTR.

12 A. Okay.

13 Q. Is it your understanding that that shipment through

14 those three railroads would go through the line from Bellevue

15 up to your plant?

16 A. No, that was not my understanding.

17 Q. What was your understanding?

18 A. That it was coming from the north, from Snohomish,

19 for the receiving, and only on the outward shipping would it

20 go south.

21 Q. What is that understanding based on?

22 A. What I have been told from Ernie or Doug.

23 Q. Now, you said that you moved to your current

24 location around 2006; is that correct?

25 A. That's my recollection, yes.

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1 Q. Why did your company move to that location?

2 A. We were displaced by the Brightwater treatment

3 plant.

4 Q. Do you own the property that you operate on?

5 A. No, I do not.

6 Q. Who owns it?

7 A. My family.

8 Q. Has your family owned it for any period of time

9 prior to 2006?

10 A. No.

11 Q. Is it fair to say that it was purchased by your

12 family in 2006?

13 A. Yes.

14 Q. Looking at Exhibit 84, were all of the structures

15 that are depicted within the black outlining that you did in

16 existence at the time that your business moved in?

17 A. No.

18 Q. What is there now that was not there in 2006?

19 A. The only structures that were there, using the

20 north at the top of the map, are the two south structures at

21 the bottom, the two south buildings. None of the pavement

22 was there. The two long, white buildings were not there, and

23 the perpendicular building to the two white buildings were

24 not there.

25 Q. So what are the two buildings that were there; what

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HOUSE/Paschalis 66

1 are they currently used for?

2 A. One is rented to a concrete company, and the other

3 is used for storage.

4 Q. Did you construct or have constructed the building

5 to the south of the white building or buildings?

6 A. Yes, we constructed that building.

7 Q. What is that building used for?

8 A. Those are the offices.

9 Q. Did you construct the white buildings to the north

10 of the offices?

11 A. Yes, we did.

12 Q. Is that one building, or is that two buildings? I

13 can't really tell so well.

14 A. That is two buildings.

15 Q. What is the purpose of those two buildings?

16 A. Those are our fabrication buildings.

17 Q. You said that, when you took over the land in 2006,

18 is it correct to say that it wasn't paved at the time?

19 A. That is correct.

20 Q. And you had it paved, I take it?

21 A. Yes, we did.

22 Q. So it is fair to say that you have made several

23 capital improvements on this land?

24 A. Yes, we have.

25 Q. Are there any improvements that have been made that

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1 we haven't discussed?

2 A. None that I can think of.

3 Q. You said earlier that you have had some thoughts

4 about where you might put a spur track.

5 A. Yes.

6 Q. If you thought a spur track would be a benefit to

7 your business operations, you would make the improvements

8 necessary to obtain that, in the same way that you

9 constructed the buildings you needed, correct?

10 A. I'm not sure of the question. You're asking

11 financially or --

12 Q. Well, let me restate the question. You have

13 certainly made improvements to the land that you thought were

14 necessary and helpful for your business operations, correct?

15 A. Correct.

16 Q. If you thought it necessary and helpful to have a

17 spur track, you could go ahead and get that done, couldn't

18 you?

19 A. If the cost analysis showed it was favorable for

20 our business, then, yes, we could.

21 Q. Sure. Assuming that that is the case, you could?

22 A. Yes.

23 Q. And you would?

24 A. Yes.

25 Q. Now, your ability to ship with Ballard south of

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1 Woodinville would be contingent on Ballard obtaining

2 reactivation rights to ship south of Woodinville, correct?

3 A. I wouldn't know that. That's what I hear.

4 Q. That is your understanding?

5 A. Yes.

6 Q. So, to a certain extent, the outcome of this

7 reactivation proceeding will give you a better sense of

8 whether you are capable of shipping south, correct?

9 A. Yes, it will give me a better assessment of being

10 able to ship south.

11 Q. Because you are currently not capable of shipping

12 south of Woodinville via this rail line?

13 A. Well, I am currently not shipping -- not

14 available -- I can't ship at all currently.

15 Q. Are you aware that Ballard Terminal Railroad

16 Company has a handling carrier relationship with the BNSF?

17 A. That was my understanding.

18 Q. If you thought it was cost-effective to ship by

19 rail and send or receive rebar by rail, would your -- let me

20 add one more thing to that -- and it was cost-effective to

21 build the spur track, you would, in fact, build the spur

22 track, wouldn't you?

23 A. Yes.

24 Q. There was some conversations about the editing that

25 was done to your letter, Exhibit 83, and you made it clear

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1 that there was some collaboration between yourself,

2 Mr. Engle, and Mr. Wilson as to the language of the letter;

3 that is that fair to say, right?

4 A. Yes.

5 Q. In any event, you looked through it and you

6 reviewed it, correct?

7 A. Yes.

8 Q. And you signed off on it, correct?

9 A. That is correct.

10 Q. And you reviewed it for accuracy?

11 A. Yes.

12 Q. And to make sure that what was represented in that

13 letter was represented to the best of your knowledge?

14 A. Yes.

15 Q. You were asked earlier whether any customers, any

16 current customers, have asked you to deliver product by rail;

17 do you recall that?

18 A. Yes.

19 Q. And you said no; do you recall that?

20 A. Yes, I said no.

21 Q. But you are not currently capable of shipping by

22 rail?

23 A. That is correct.

24 Q. So there would really be no reason for any customer

25 to ask you that question currently, correct?

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HOUSE/Paschalis 70

1 A. That is correct, yes. The customer would not know

2 that that was available to them.

3 Q. You had alluded to the opportunity to perhaps use a

4 customer's rail spur.

5 A. Yes.

6 Q. Can you discuss that for a moment. What are the

7 circumstances that you are referring to?

8 A. I have not done any in-depth study on it, but Boise

9 Cascade is a former customer of ours, and it is my

10 understanding they have a rail spur just up the street from

11 us. Again, a cost feasibility study would need to be done to

12 see if that's an option, but that is something to look into.

13 MR. PASCHALIS: I don't have anything further,

14 Mr. House.

15 THE WITNESS: Okay.

16 MR. PASCHALIS: But someone else might.

17 MR. FERGUSON: Tom, I am going to have a

18 couple follow-ups, but, if it is all right with you, I would

19 like to just take a quick break. Also, I want to let you

20 know which exhibits I am going to point to so you are

21 prepared. One is a map, Exhibit 3, we previously marked.

22 You should have it already if you are keeping a deposition

23 exhibit log, but Marina sent you another copy of it last

24 night. We can go off the record at this point, Wade, please.

25 (A brief recess was taken.)

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1 Q. And then, finally, I want to point your attention 2 to what has been marked as Exhibit 96. This is a table filed 3 with Ballard Terminal Railroad's December 6th petition to the 4 Surface Transportation Board. I will represent to you that 5 it includes a list of individuals or businesses that have 6 sent in letters in some way in this proceeding. And it 7 includes a series of columns, and, in the far right corner, 8 it includes something called "Annual Car Count." Down on the 9 lower, left-hand corner, under a heading entitled, 10 "Reactivation Freight Customers," CT Sales, rebar 11 fabrication, is listed as the third reactivation freight 12 customer in that category; do you see that? 13 A. Yes. 14 Q. Now, if you follow the column over to the right, do 15 you see where it says the numbers 120 and 155? 16 A. Yes. 17 Q. Are you familiar with those numbers? 18 A. No. 19 Q. Did you provide to Ernie Wilson or Doug Engle any 20 kind of a count about the number of railcars that your 21 business would send or receive rebar on? 22 A. Other than the 8,300 tons from the fiscal year, no. 23 Q. But that 8,300 tons, did you say earlier that it 24 was conceivable that you could receive all of your rebar by 25 rail?	HOUSE/Paschalis 81 1 is like -- do you know how far the Boise Cascade site that 2 you mentioned is from your current location? 3 A. Not in distance. They are also in the Maltby area, 4 before you get to Maltby Cafe, so south of Maltby Cafe. 5 Q. Are they within a couple miles of your location? 6 A. Yes. 7 Q. So, if you used the Boise site, how would you get 8 the straight rebar from the Boise site to your location? 9 A. That would require trucks. 10 MR. WAGNER: Okay. Andy? 11 MR. MARCUSE: I have nothing further. 12 MR. FERGUSON: Tom, we are all done here on 13 this end. 14 MR. PASCHALIS: Okay, just a couple more. 15 16 EXAMINATION 17 BY MR. PASCHALIS: 18 Q. In your letter, Exhibit No. 83, we have the number 19 8,300 tons of finished rebar per year, and you had testified 20 that that is about how much you receive in raw product and 21 how much you ship out; do you recall that? 22 A. Yes. 23 Q. Are you aware of how many tons fits in a railcar? 24 A. I believe I provided the information to Ernie 25 and/or Doug of 30 tons fitting on a truck, and it is their
Page 80	Page 82
HOUSE/Wagner 80 1 A. Well, that's conceivable, yes. 2 Q. But you do not know whether you would? 3 A. No. 4 MR. FERGUSON: I don't have any further 5 questions. Thank you. 6 7 EXAMINATION 8 BY MR. WAGNER: 9 Q. Mr. House, would it be fair to say that you would 10 consider the capital costs and maintenance costs of putting 11 in a spur in deciding whether you would use rail instead of 12 trucks to receive your straight rebar? 13 A. Yes. 14 Q. Do you use your own trucks to take delivery of 15 straight rebar, or is it some third party or the mill who 16 owns the trucks? 17 A. It's a combination. From Cascade, they have a lot 18 of their own trucking. We also incorporate a third party on 19 our own for some loads. And then, from our local mill in 20 West Seattle, we will-call, we pick up from there. 21 Q. So you never pick up from Oregon with your own 22 trucks; is that correct? 23 A. Correct. 24 Q. Now, you talked about an alternative for taking 25 rail service, and that was to use the Boise Cascade site that	HOUSE/Wagner 82 1 number to say 2 1/2 loads fit in a railcar. 2 Q. You had just discussed with Mr. Ferguson a current 3 customer who is able to or has the ability to -- strike that. 4 You said you were aware of a current customer who has the 5 ability to receive shipments by rail? 6 MR. FERGUSON: Objection; mischaracterizes the 7 witness's testimony. 8 A. I have a customer that could conceivably receive 9 his rebar by rail, yes. 10 Q. Was it your testimony that the contract that you 11 currently have is expiring sometime in the near future? 12 A. That is correct. 13 Q. But it is conceivable that you could get new 14 contracts with this customer or other customers that have 15 similar capabilities in the future? 16 MR. FERGUSON: Object to the form; calls for 17 speculation. 18 A. Yes. 19 MR. PASCHALIS: That is all I have. 20 21 EXAMINATION 22 BY MR. WAGNER: 23 Q. Mr. House, I just want to go over that customer 24 that you were just talking about. When you deliver rebar to 25 a customer at a job site, do you deliver all of the rebar at

EXHIBIT 15

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731)
BALLARD TERMINAL)
RAILROAD COMPANY, L.L.C.)
-ACQUISITION AND EXEMPTION-)
WOODINVILLE SUBDIVISION)
STB DOCKET NO. AB-6 (SUB. NO. 465X))
BNSF RAILWAY COMPANY)
-ABANDONMENT EXEMPTION-)
IN KING COUNTY, WA)

DEPOSITION UPON ORAL EXAMINATION

OF

BYRON COLE

** Confidential Sections Enclosed **

Taken at 600 University Street, Suite 3600

Seattle, Washington

DATE: Wednesday, February 12, 2014

REPORTED BY: Katie J. Nelson, RPR, CCR
CCR NO.: 2971

1 trade off with the City of Kirkland and Bellevue, to the
2 extent that it extends that far.

3 MR. PASCHALIS: Let me just interject, Mr.
4 Cole. I don't think there was a question about a trail.
5 So I'd encourage you to focus on the question asked --

6 THE WITNESS: I thought --

7 MR. PASCHALIS: -- and answer.

8 THE WITNESS: -- basically the question --

9 MR. PASCHALIS: The question was about
10 property rights and that's --

11 Q. (By Mr. Cohen) My question was, did you estimate
12 the cost of acquiring --

13 A. No.

14 Q. -- property rights?

15 A. No.

16 Q. Okay.

17 A. Who would I talk where they would talk to me
18 back?

19 Q. I'm sorry?

20 A. Who would I talk to over there that would talk
21 back to me? Nobody.

22 MR. COHEN: Mr. Paschalis, the documents
23 Bated-stamped BTR 551 through 553, is that the additional
24 information you referenced earlier in the dialogue this
25 morning?

1 yanked out a few months ago, which is, you know, it's
2 heartbreaking if you're a small business and you see what
3 could be done and you can't get the Surface Board to listen
4 to you.

5 Q. So you've had no discussions with RJB?

6 A. Is that bad?

7 Q. Please, I'm not commenting, I'm just asking you.

8 A. Okay, I haven't.

9 Q. Do you know if anyone else at Ballard has?

10 A. I would imagine Doug has talked to them.

11 Q. We'll ask.

12 A. Which he's not a Ballard employee. We're
13 business partners here in this thing.

14 Q. Have you had any discussions with CT Sales about
15 building a spur into their property?

16 A. Let's see, I can't think where they are in the
17 scheme of things.

18 Q. I guess you said you hadn't talked to CT Sales at
19 all?

20 A. Are they in Kirkland?

21 Q. I don't know.

22 A. Well, save the question, ask Doug.

23 Q. We'll do that. Has Ballard negotiated any
24 operating or use agreements with WATCO? I know you said
25 you haven't signed any, but have you --

1 A. No, I haven't negotiated with them at all.

2 Q. Anyone else with your company?

3 A. No.

4 Q. Okay.

5 A. I think our only contact is Doug.

6 Q. Mr. Cole, you've mentioned that Doug Cole may
7 have had involvement in many of these various -- I'm sorry,
8 Doug Engle. Is Mr. Engle authorized to conduct
9 negotiations or make representations on behalf of Ballard
10 Terminal Railroad?

11 A. Yeah, in that informal way. We didn't sign a
12 contract. But I've known Doug now -- I met Doug when he
13 was working with Tom Payne, when I was in the process of
14 developing a relationship with Payne, and we finally, at
15 Burlington Northern's urging, submitted the joint bid to
16 the company.

17 MR. PASCHALIS: Can I ask that the question
18 be repeated.

19 (Question on Page 104, Lines 6 through 10
20 read by the reporter.)

21 MR. PASCHALIS: Okay. You can ask the next
22 question.

23 Q. (By Mr. Cohen) Are you done with your answer?

24 A. Yeah, I mean, I've known Doug long enough that he
25 is who he is. He's a hard working guy. And if I saved all

1 of the most interesting parts of this venture for me to do,
2 I'd go nuts because I don't have the time. I already got
3 three railroads and we're looking at a fourth, although
4 it's going to be hooked into the end of the third one.

5 So you have to trust somebody and he probably
6 does, I don't know. He's good or better job than I would
7 do. It's not like I didn't know he was doing this

8 Q. To your knowledge, has Ballard had any e-mail or
9 other written communications with WATCO about their role on
10 the Eastside Rail corridor?

11 A. I haven't gotten anything from WATCO.

12 Q. Sent anything to WATCO?

13 A. And I haven't sent anything. James, my operation
14 manager, that's not part of what he does. He's a
15 day-to-day guy seven days a week.

16 Q. So you're not aware of any e-mail or other
17 communications with WATCO from or to Ballard?

18 A. I think Doug would have done the only ones that
19 were done.

20 Q. Okay.

21

22

23

24

25